



**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC
DEVELOPMENT COMMITTEE
REGULAR MEETING**

**Thursday, February 18, 2021
10:30 AM**

Committee Members:

Councilmembers Sophie Hahn, Rigel Robinson, and Lori Droste
Alternate: Councilmember Ben Bartlett

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council Land Use, Housing, & Economic Development Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/81837769005>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **18 3776 9005**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Land Use, Housing, & Economic Development Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - February 4, 2021

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

Committee Action Items

2. Quadplex Zoning

From: Councilmember Droste (Author), Councilmember Taplin (Author), Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor)

Referred: February 8, 2021

Due: June 29, 2021

Recommendation:

1. Refer to the City Manager and Planning Commission revisions to the zoning code and General Plan, to require proposed housing developments containing up to 4 residential units to be considered ministerially, if the proposed housing development meets certain requirements but not limited to:

-that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income,

-that the development is not located within a historic district, is not included in the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

-that the development is not located within particularly vulnerable high fire wildfire danger areas, as specified by Cal Fire.

Additional considerations:

-Consider a local affordable housing density bonus for deeper affordability in certain jobs-rich or transit-oriented areas if a certain percentage of the units are affordable to 80% of area median income.

-Conduct a displacement risk analysis and consider possible ways that zoning changes can be crafted to prevent and mitigate negative externalities which could affect tenants and low and moderate-income homeowners.

-Allow for the possibility of existing homes/footprints/zoning envelopes to be divided into up to four units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase onsite, creating homes that are more affordable, saving and lightly modifying an older structure as part of internally dividing it into more than one unit.

Council directs that staff initiate this work immediately and the Planning Commission incorporate zoning reform into its 2021 and 2022 work plan to institute these changes in anticipation of the Housing Element update. Staff and the commission should examine how other cities have prepared for and implemented missing middle housing in Minneapolis, Portland, and Sacramento and conduct extensive community outreach during the course of this update.

Financial Implications: See report

Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

Committee Action Items

3. Tenant Opportunity to Purchase Act, Adding BMC Chapter 13.89

From: Mayor Arreguin (Author)

Referred: February 24, 2020

Due: April 20, 2021

Recommendation: 1. Adopt a first reading of an ordinance adding Berkeley Municipal Code Chapter 13.89, the Tenant Opportunity to Purchase Act (TOPA), that will take effect on final adoption with an implementation start upon completion of Administrative Regulations and funding of related program costs; and
2. Direct the City Manager to take all necessary steps to implement this chapter including, but not limited to:

1. Developing Administrative Regulations;
2. Preparing an implementation strategy;
3. Identifying resources to align databases from Finance, Planning, and the Rent Board to accurately reflect the properties that would be subject to TOPA;
4. Determining necessary staffing for program administration and hearing officers for adjudication;
5. Timelines for project “roll-out”;
6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and recommending possible funding sources;
7. Quantifying an annual program budget and referring such program costs to the June 2020 Budget process.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Committee Action Items

4. **Resolution Recognizing Housing as Human Right; Referring City Manager to Study Financial Feasibility of Municipal Housing Development Pilot Program with Cooperative, Nonprofit, and Public Ownership Models, Administered as Automatic Stabilizers to Guarantee Adequate Housing** *(Item contains revised material.)*

From: Councilmember Taplin (Author), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)

Referred: February 8, 2021

Due: June 29, 2021

Recommendation: Refer the City Manager's office to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators. Pilot program feasibility study shall include, but not be limited to:

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire, develop, and/or maintain permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.

Financial Implications: See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- 5. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals**
From: Councilmember Harrison (Author)
Referred: July 28, 2020
Due: September 30, 2021
Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment

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*Written communications addressed to the Land Use, Housing & Economic Development Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 11, 2021.



Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@cityofberkeley.info.

**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC
DEVELOPMENT COMMITTEE
REGULAR MEETING MINUTES**

**Thursday, February 4, 2021
10:30 AM**

Committee Members:

Councilmembers Sophie Hahn, Rigel Robinson, and Lori Droste
Alternate: Councilmember Ben Bartlett

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

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Roll Call: 10:36 am. Councilmembers Droste, Hahn, and Robinson present.

Public Comment on Non-Agenda Matters: 2 speakers.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - January 21, 2021

Action: M/S/C (Droste/Hahn) to approve the January 21, 2021 minutes.

Vote: All Ayes.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2a. **Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure**

From: Homeless Commission

Referred: March 30, 2020

Due: February 4, 2021

Recommendation: The Homeless Commission recommends that BMC 13.31 be amended to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income. Such procedure should involve establishing a complaints procedure under an existing City of Berkeley department such as the Department of Planning or Rent Stabilization Board, where a complaint could be filed by a prospective tenant, or tenant, alleging that they have been discriminated against by a landlord, property owner or authorized agent or employee when seeking rental housing or in any other context currently covered under BMC 13.31.

The Homeless Commission further recommends that any person seeking housing, with a voucher or any subsidy to pay their rent, be considered for the rental in the order which their rental application is received and be entitled to the rental as the first applicant of right. Insufficient credit or poor credit shall not be a fact considered for rental as to the totality of the rent to be paid if the rent is to be otherwise paid through the voucher or subsidy source.

Financial Implications: See report

Contact: Brittany Carnegie, Commission Secretary, (510) 981-5400

2b. **Companion Report: Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure**

From: City Manager

Referred: March 30, 2020

Due: February 4, 2021

Recommendation: The City Manager thanks the Homeless Commission for their concern regarding potential discrimination against residents trying to utilize rental assistance vouchers in Berkeley. She recommends, however, taking no action on the Homeless Commission recommendation since the City already funds legal assistance for low-income residents that may be used to obtain relief under BMC 13.31.

Financial Implications: None

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

Committee Action Items

Action: 3 speakers. M/S/C (Hahn/Droste) to send the item to Council with a positive qualified recommendation to refer to the City Manager to: 1) Draft amendments to the Source of Income Discrimination Ordinance to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income, parallel to the Fair Chance Ordinance; 2) Submit to Council in 2022 a report reviewing the effectiveness of the source of income discrimination ordinance in its first five years; and 3) Update and improve information on the City website and elsewhere about legal services for low income residents; and 4) Refer to the 4x4 Committee discussion of feasibility of enforcement of source of income discrimination alongside the fair chance ordinance, and discussion of Homeless Commission's first-in-time standard recommendations.

Vote: All Ayes.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

3. **Tenant Opportunity to Purchase Act, Adding BMC Chapter 13.89**

From: Mayor Arreguin (Author)

Referred: February 24, 2020

Due: April 20, 2021

Recommendation: 1. Adopt a first reading of an ordinance adding Berkeley Municipal Code Chapter 13.89, the Tenant Opportunity to Purchase Act (TOPA), that will take effect on final adoption with an implementation start upon completion of Administrative Regulations and funding of related program costs; and
2. Direct the City Manager to take all necessary steps to implement this chapter including, but not limited to:

1. Developing Administrative Regulations;
2. Preparing an implementation strategy;
3. Identifying resources to align databases from Finance, Planning, and the Rent Board to accurately reflect the properties that would be subject to TOPA;
4. Determining necessary staffing for program administration and hearing officers for adjudication;
5. Timelines for project "roll-out";
6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and recommending possible funding sources;
7. Quantifying an annual program budget and referring such program costs to the June 2020 Budget process.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Unscheduled Items

4. **Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals**
From: Councilmember Harrison (Author)
Referred: July 28, 2020
Due: September 30, 2021
Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment

Action: M/S/C (Droste/Hahn) to adjourn the meeting.

Vote: All Ayes.

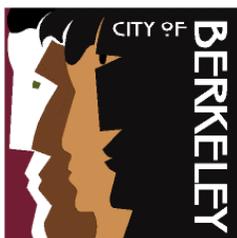
Adjourned at 11:23 am.

I hereby certify that this is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on February 4, 2021.

Sarah K. Bunting, Assistant City Clerk

Communications

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Lori Droste
Vice Mayor, District 8

ACTION CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Lori Droste, Councilmember Terry Taplin, Councilmember Rashi Kesarwani, Mayor Jesse Arreguin

Subject: Quadplex Zoning

RECOMMENDATION

1. Refer to the City Manager and Planning Commission revisions to the zoning code and General Plan, to require proposed housing developments containing up to 4 residential units to be considered ministerially, if the proposed housing development meets certain requirements but not limited to:
 - that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income,
 - that the development is not located within a historic district, is not included in the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.
 - that the development is not located within particularly vulnerable high fire wildfire danger areas, as specified by Cal Fire.

Additional considerations:

- Consider a local affordable housing density bonus for deeper affordability in certain jobs-rich or transit-oriented areas if a certain percentage of the units are affordable to 80% of area median income.¹
- Conduct a displacement risk analysis and consider possible ways that zoning changes can be crafted to prevent and mitigate negative externalities which could affect tenants and low and moderate-income homeowners.
- Allow for the possibility of existing homes/footprints/zoning envelopes to be divided into up to four units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase onsite, creating homes that are more affordable, saving and lightly modifying an older structure as part of internally dividing it into more than one unit.²

Council directs that staff initiate this work immediately and the Planning Commission incorporate zoning reform into its 2021 and 2022 work plan to institute these changes in anticipation of the Housing Element update. Staff and the commission should examine how other cities have prepared for and implemented missing middle housing in Minneapolis, Portland, and Sacramento and conduct extensive community outreach during the course of this update.

CURRENT PROBLEM AND ITS EFFECTS

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.³ Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create millions of more homes in California to tackle the state’s affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.4 million (as of December 2020)—an increase of 56% over the median sale price in December 2015 of \$895,000.⁴ These escalating costs coincided with an increase of 14% in Berkeley’s homeless population from 2017 to 2019, and a 34% increase from 2015 to 2019 point-in-time counts.⁵ These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in

¹ Jobs-rich and transit-oriented definitions should be defined by the Planning Commission in consultation with staff.

² City of Portland, <https://www.portlandoregon.gov/bps/article/711691>

³ Metropolitan Transportation Commission, 2018. <http://www.vitalsigns.mtc.ca.gov/>

⁴ Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

⁵ https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf

overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

Low-Income Households Cannot Afford to Live in Berkeley

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. The U.S. Department of Housing and Urban Development (HUD) defines "affordable" as housing that costs no more than 30 percent of a household's monthly income. Households are considered to be "rent burdened" when more than a third of their income goes toward housing costs. In Alameda County, "Although rent burden increased across all income groups, it rose most substantially for low- and very low-income households. In both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent."⁶

Although residents of Berkeley passed Measure O which will substantially increase funding for affordable housing, low-income units are increasingly expensive to create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of affordable/subsidized housing exceeds the supply.⁷ Without a substantial additional increase in funding for affordable housing, the City will be increasingly challenged to create enough subsidized housing to meet the demand. For example, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings in Berkeley. This project cost \$18 million to build.⁸ While Berkeley should continue to support subsidized housing, subsidized housing alone is insufficient to address the growing housing and homelessness crisis.

Middle-Income Households Can't Afford to Live in Berkeley

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with "adults whose annual household income is two-thirds to double the national median." In 2018, middle income households were those earning approximately \$48,500 to \$145,500 for a household of three.⁹ According to the Pew Research Center, "The San Francisco-Oakland-Hayward metropolitan area in California is one of the most expensive areas, with a price level that was 31.6% higher than the national average. Thus, to step over the national middle-class

⁶ Zuk, M., & Chapple, K. (2015). Urban Displacement Project.

http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf

⁷ "The Cost of Building Housing" *The Turner Center* <https://turnercenter.berkeley.edu/construction-costs-series>

⁸ Flood, Lucy. (1/18/2018). "Berkeley low-income seniors get a fresh start at Harper Crossing."

<https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>

⁹ <https://www.pewresearch.org/fact-tank/2020/07/23/are-you-in-the-american-middle-class/>

threshold of \$48,500... a household in the San Francisco area needs a reported income of about \$63,800, or 31.6% more than the U.S. norm, to join the middle class.”¹⁰

In the Bay Area, a family currently has to earn \$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of \$1.4 million up front).¹¹ This means that many City of Berkeley employees couldn't afford to live where they work: a fire captain (making \$144,000) with a stay at home spouse wouldn't be able to afford a home. Even a firefighter (earning \$112,000 annually) and a groundskeeper (making \$64,000), or two librarians (making \$89,000 each) couldn't buy a house.¹²

Berkeley Unified School District employees have recently been advocating for teacher housing. Unfortunately, the housing options for teachers are insufficient for the overwhelming need. According to a recent Berkeley Unified School District (BUSD) survey, 69% of teachers or staff who rent believe that high housing costs will impact their ability to retain their BUSD positions.¹³ Since individual K-12 teacher salaries average ~\$75,962,¹⁴ the majority of teachers are not classified as low-income (<\$62,750), according to Housing and Urban Development guidelines. As a result, many cannot qualify for affordable housing units. Since middle-income individuals and families can't qualify for affordable housing units and very few subsidies are available to help, the vast majority have to rely on non-governmental subsidized methods and the private market to live in the Bay Area.

Families Are Struggling to Live in Berkeley

Many families are fleeing the Bay Area due to the high cost of living. According to a study by the Turner Center for Housing Innovation, the income and racial patterns of out-migration and in-migration indicate that “the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity.”¹⁵ Rent for a two-bedroom apartment in Berkeley costs approximately \$2,070/month¹⁶ while the median child care cost in Alameda County is

¹⁰ <https://www.pewresearch.org/fact-tank/2020/07/23/are-you-in-the-american-middle-class/>

¹¹ “The salary you must earn to buy a home in the 50 largest metros” (10/14/2018). HSH.com <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>

¹² City of Berkeley Human Resources, “Job Descriptions” <http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>

¹³ Berkeley Unified School District, “Recommendation for District-Owned Rental Housing for Employees”, <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Adfd74865-9541-4ff8-b6a6-4dcbd30acdc3>

¹⁴ Education Data Partnership, “Teacher Salaries” <http://www.ed-data.org/district/Alameda/Berkeley-Unified>

¹⁵ Romem, Issa and Elizabeth Kneebone, 2018. “Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?” <https://turnercenter.berkeley.edu/disparity-in-departure>

¹⁶ Berkeley Rentals, <https://www.zumper.com/blog/san-francisco-bay-area-metro-report/>

\$1,824 a month, an increase of 36% in the past four years.¹⁷ Consequently, many families are paying well over \$60,000 for living and childcare expenses alone.

Homelessness is on the Rise in the Bay Area

High housing costs also lead to California having among the highest rates of poverty in the nation at 19%.¹⁸ Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.¹⁹ The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area’s extreme housing affordability crisis. According to the 2019 point-in-time count, Berkeley had approximately 1,108 individuals experiencing homelessness on any given night.²⁰ In order to act in accordance with best practices research on alleviating homelessness and help homeless individuals get housed, the City needs to create more homes.²¹ Tighter housing markets are associated with higher rates of homelessness, indicating that the creation of additional housing for all income levels is key to mitigating the crisis.²² In the 1,000 Person Plan to Address Homelessness, Berkeley’s Health, Housing and Community Services staff also recommend that Council prioritizes “implementing changes to Berkeley’s Land Use, Zoning, Development Review Requirements for new housing with an eye toward alleviating homelessness.”

BACKGROUND

In 2019, Councilmembers Lori Droste, Ben Bartlett, Rashi Kesarwani and Rigel Robinson introduced Missing Middle Housing legislation in order to facilitate the construction of naturally affordable missing middle housing. Missing middle housing refers to small multi-unit buildings that are compatible in scale with single-family neighborhoods. The final legislation passed by Council was an agreement to **study** how the City of Berkeley can incorporate varying building types throughout Berkeley and

¹⁷ D’Souza, Karen, 2/3/19. “You think Bay Area housing is expensive? Child care costs are rising, too.” <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

¹⁸ The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

¹⁹ SPUR: Ideas and Action for a Better City. “Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region’s greatest challenge.” Molly Turner, Urbanist Article, October 23, 2017 <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>

²⁰ Berkeley Homeless Point-in-Time Count and Survey Data, 2019. https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf

²¹ United States Interagency Council on Homelessness “The Evidence behind Approaches that Drive an End to Homelessness” December 2017, https://www.usich.gov/resources/uploads/asset_library/evidence-behind-approaches-that-end-homelessness.pdf

²² *Homeless in America, Homeless in California*. John M. Quigley, Steven Raphael, and Eugene Smolensky. The Review of Economics and Statistics, February 2001, 83(1): 37–51 © 2001 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology. https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf

address exclusionary zoning practices. While the entire City Council voted unanimously to study this, the COVID-19 pandemic led to budget cuts which would have funded such a study. In July of 2020, Berkeley City Council additionally supported Senate Bill 902, which would have allowed missing middle housing in transit-oriented or jobs-rich areas.²³

Regional Housing Needs Goals

In January of 2021, the Association of Bay Area Governments passed new Regional Housing Needs Allocations for the Bay Area. As a result, Berkeley will have to plan for approximately 8,900 homes. This is a significant increase over the previous years. As a result, Berkeley needs to zone for significantly more housing. One way Berkeley can address this proposed increase is to allow quadplexes throughout Berkeley and undo the legacy of exclusionary zoning.

Quadplexes

What are quadplexes?

Quadplexes are:

1. A type of missing middle housing that has up to four units within a structure that is often similar in size, scale, and design to a large single-family home.
2. Housing types that are naturally affordable and less expensive than most housing options available within Berkeley.

The current housing market has led to “barbell” housing delivery. That is, new units tend to be highly-priced (market rate or luxury) or highly subsidized (affordable).

Consequently, the majority of the population can’t access quadplexes and other missing middle units because the dearth of funding, scarcity of land, and high construction costs impose challenges on viability. One study found that individuals trying to create missing middle housing cannot compete financially with larger projects in areas zoned for higher density, noting “many smaller developers have difficulty obtaining the necessary resources, including the competitive funding, required to offset the high initial per-unit development costs, and larger developers with deeper pockets and more experience navigating complex regulatory systems will almost always opt to build projects that are large enough to achieve the bulk per-unit development rate.”²⁴

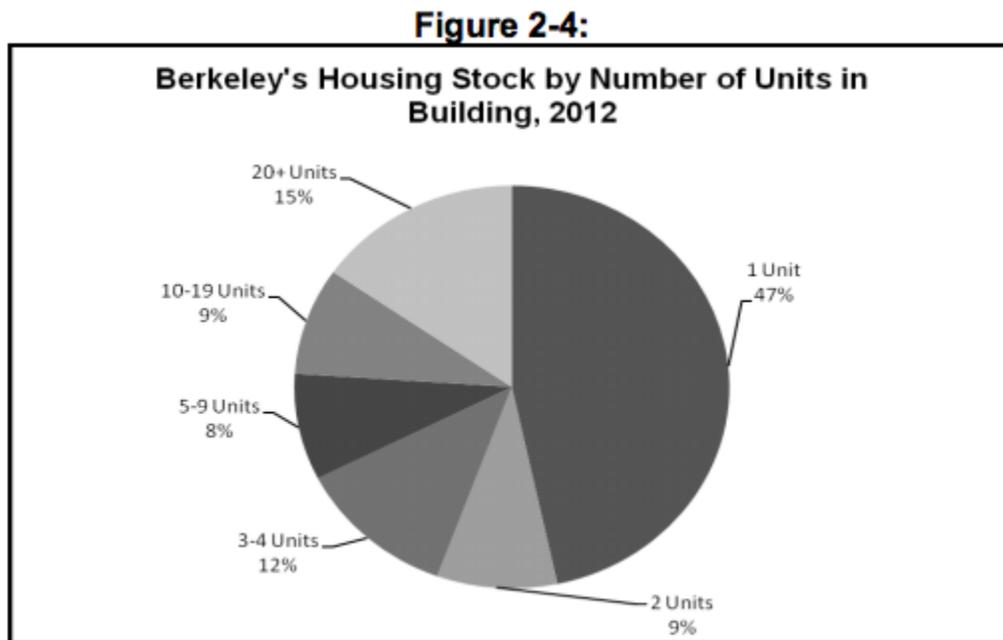
Additionally, missing middle housing is not permitted in areas zoned R1 (single family family and one accessory dwelling unit only), R1A (limited two family), and R2

²³https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/07-28_Annotated_Agenda_pdf.aspx

²⁴ The Montgomery Planning Dept., “The Missing Middle Housing Study,” September 2018. http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf

(restricted two family). Other factors that may prevent the creation of missing middle housing include lot coverage ratios and setback and parking requirements.²⁵

One home within a quadplex is undeniably less expensive than comparable single family homes, leading to greater accessibility to those earning median, middle, or lower incomes. Currently, the median price of a single family home in Berkeley is \$1.4 million dollars, which is out of reach for the majority of working people.²⁶ While some may erroneously argue that the *only* way to address the needs of low- or moderate- income families is to provide subsidized housing, ample research indicates this is not the case because the distribution of land costs can be spread across multiple units and construction costs are lower. Approximately half of Berkeley's housing stock consists of single family units²⁷ and more than half of Berkeley's residential land is zoned in ways that preclude most quadplexes. As a result, today, only wealthy households can afford homes in Berkeley.



Source: US Census, ACS 2008-2012 5-Year Estimate., Table B25024

Quadplexes generally have small- to medium-sized footprints and are often two stories or less, allowing them to blend into the existing neighborhood while still encouraging greater socioeconomic diversity. These types of homes exist in every district of Berkeley, having been built before they were banned in districts only allowing single

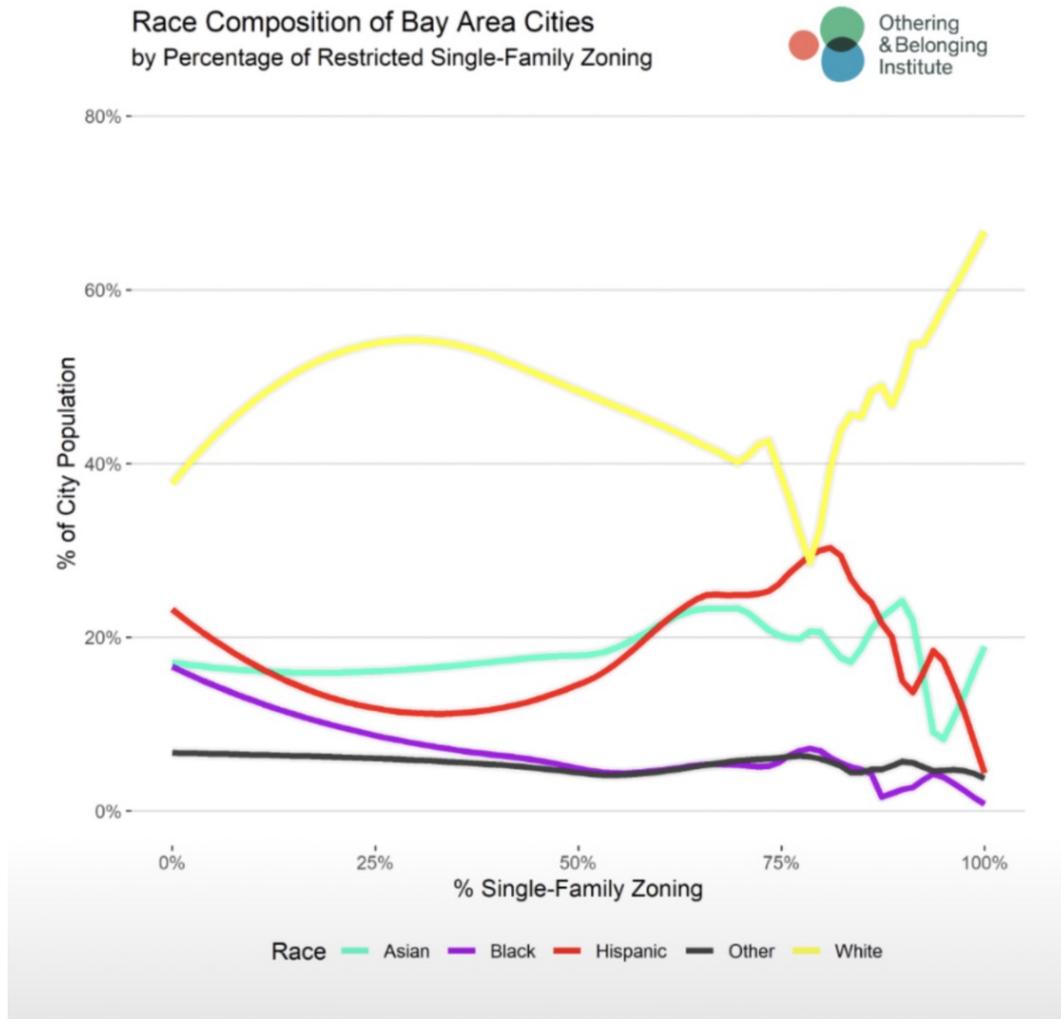
²⁵ Ibid.

²⁶ Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

²⁷ City of Berkeley 2015 -2023 Housing Element.

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-2023%20Berkeley%20Housing%20Element_FINAL.pdf

family homes. Quadplexes were severely limited in other districts by zoning changes initiated in 1973 with the Neighborhood Preservation Ordinance. Regardless of the original intent of the Neighborhood Preservation Ordinance, the effect of this citizen-led measure was to downzone large swaths of Berkeley. Downzoning meant that fewer housing units were allowed to be built in Berkeley over the past 47 years. Many scholars have studied the effect of land use policies and have concluded that downzoning leads to higher housing costs and economic and racial segregation.²⁸



²⁸ Lens, Michael and Paavo Monkonnen. (2015). "Do Strict Land Use Regulations Make Metropolitan Areas More Segregated by Income?" <https://www.tandfonline.com/doi/full/10.1080/01944363.2015.1111163#abstract>

History of Exclusionary Zoning, Racial and Economic Segregation, and Current Zoning

Single family residential zoning was born in Berkeley in the Elmwood neighborhood in 1916. This zoning regulation forbade the construction of anything other than one home per lot. In 1915, Berkeley's City Attorney Frank V. Cornish wrote, "Apartment houses are the bane of the owner of the single family dwelling" while the consultant who penned Berkeley's zoning ordinance stated, "[The] great principle of protecting the home against the intrusion of the less desirable and floating renter class."²⁹ Subsequently, the Mason McDuffie Company's use of Berkeley's zoning laws and racially-restrictive property deeds and covenants prevented Black, Indigenous, and People of Color from purchasing or leasing property in east Berkeley.³⁰

Mason-McDuffie race-restrictive covenants stated, "if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void..."³¹ In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the "disastrous effects of uncontrolled development"³² and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.³³

After *Buchanan v. Warley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red) neighborhoods. These maps enabled discriminatory lending practices (later called 'redlining') and allowed lenders to enforce local segregation standards.³⁴

²⁹ Frank V. Cornish. "The Legal Status of Zone Ordinances" and Charles Cheney. "The Necessity for a Zone Ordinance in Berkeley." Berkeley Civic Bulletin, May 18, 1915.

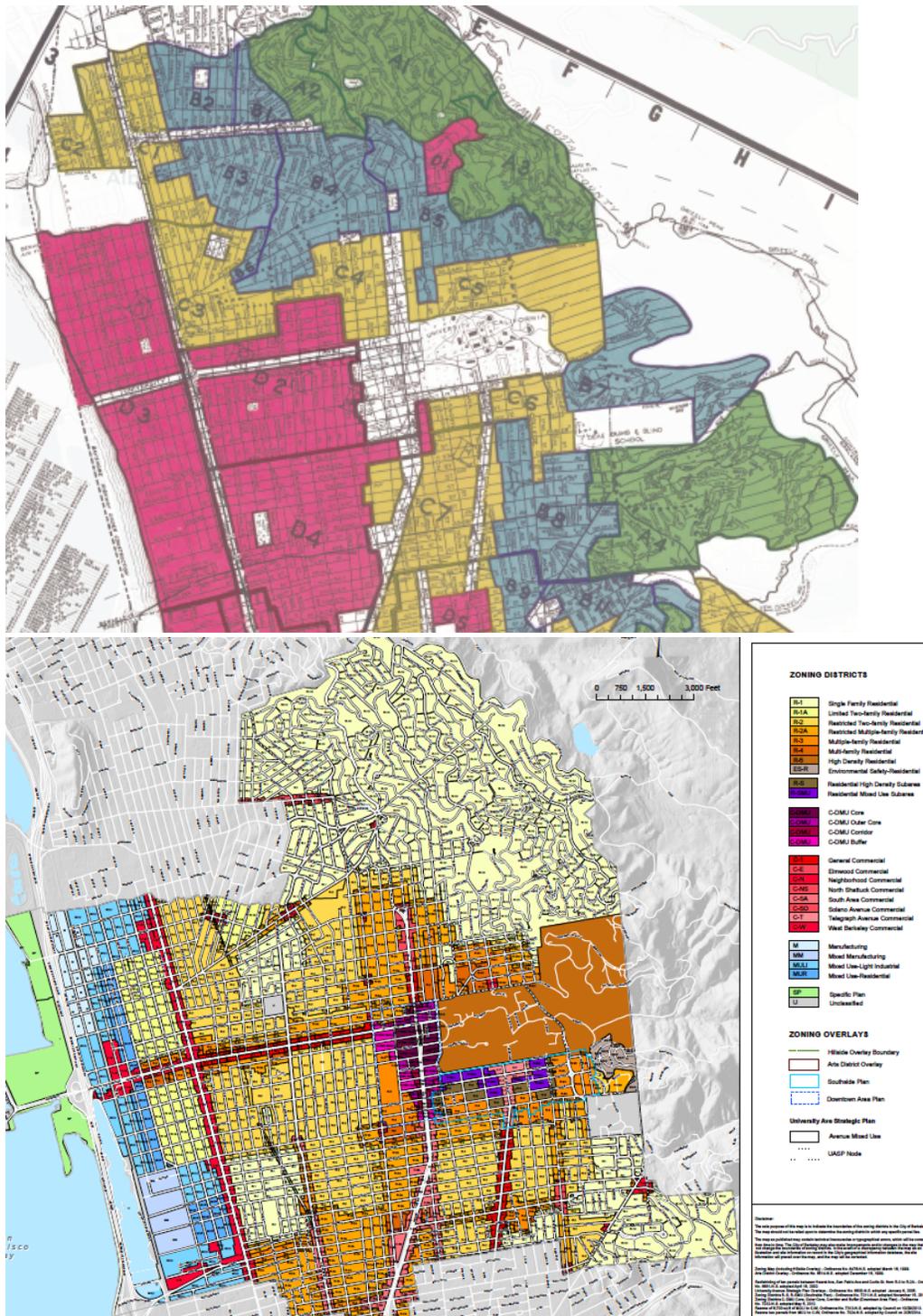
³⁰ Wollenberg, *Berkeley, A City in History*, 2008.

³¹ Claremont Park Company Indenture, 1910

³² Lory, Maya Tulip. "A History of Racial Segregation, 1878–1960." *The Concord Review*, 2013. <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

³³ Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. Berkeley Planning Journal, 3(1). Retrieved from <https://escholarship.org/uc/item/26b8d8zh>

³⁴ NCRC Opening Doors to Economic Opportunity, "HOLC "REDLINING" MAPS: The persistent structure of segregation and economic inequality." Bruce Mitchell and Juan Franco. https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf



The images above compare a HOLC-era (Thomas Bros Map) map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.³⁵

³⁵ Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., “Mapping Inequality,” American Panorama, ed. Robert K. Nelson and Edward L. Ayers, <https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full>

Prior to the 1970s and the passage of the Neighborhood Preservation Ordinance, a variety of missing middle housing --duplexes, triplexes, and other smaller multi-unit building typologies-- was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. In 1973, the residents of Berkeley passed the Neighborhood Preservation Ordinance which outlawed multi-unit housing in certain parts of Berkeley. As Councilmember Ben Bartlett and Yelda Bartlett wrote in their 2017 *Berkeleyside* op-ed, the neighborhood preservation ordinance “[the Neighborhood Preservation Ordinance] did not mention race, but instead tried to preserve ‘neighborhood character.’ As a result, from 1970 to 2000, fewer than 600 dwelling units were built in Berkeley. Areas zoned for single family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2) are now some of the most expensive parts of our city—especially on a per-unit basis.”³⁶

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property. While race-restrictive covenants no longer prohibit individuals from purchasing or leasing homes, most cities still retain the vestiges of exclusionary zoning practices.

The UC Othring and Belonging Institute recently released a study on racial segregation and zoning practices which revealed that 83% of residential land in the Bay Area is zoned for single family homes.³⁷ The authors found that the ramifications of such zoning practices leads to a greater percentage of white residents, as recounted in KQED’s “The Racist History of Single Family Zoning.”³⁸ By banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses, in low-density, “desirable” places in Berkeley, the current zoning map dictates that only wealthier families will be able to live or rent in certain parts of Berkeley, mainly in North and East Berkeley. Today, with the median home sale price at \$1.3 million³⁹ and the typical White family having eight times the wealth of the typical Black family,⁴⁰ this de-facto form of segregation is even more pronounced. *Missing*

³⁶<https://www.berkeleyside.com/2017/06/13/opinion-berkeleys-zoning-laws-wall-off-communities-color-seniors-low-income-people-others>

³⁷Racial Segregation in the San Francisco Bay Area (2020) UC Othring and Belonging Institute. <https://belonging.berkeley.edu/racial-segregation-san-francisco-bay-area-part-5>

³⁸ <https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning>

³⁹ Berkeley, CA Real Estate Market (2021). https://www.realtor.com/realestateandhomes-search/Berkeley_CA/overview

⁴⁰ Survey of Consumer Finances (2020). Federal Reserve. <https://www.federalreserve.gov/econres/scfindex.htm>

middle housing can directly benefit those harmed by this modern-day exclusionary zoning practice that perpetuates socioeconomic and racial segregation.

According to the data mapped by UC Berkeley's Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as 'at-risk of exclusion', currently feature 'ongoing exclusion', or are at stages of 'advanced exclusion'. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a 'hot housing market,' and migration patterns. The Urban Displacement Project's findings indicate that exclusion is more prevalent than gentrification in the Bay Area.⁴¹ While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

University of California-Berkeley Professor Karen Chapple, anti-displacement expert and director of the Urban Displacement Project, stated that "the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today's exclusionary areas in the East Bay... Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today."⁴² Not surprisingly, Chapple has indicated that zoning reform "has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today."⁴³

Historic Redlining

Redlining was a practice whereby certain neighborhoods or areas were designated as being high-risk for investment. These high-risk designations were literally marked on maps using red coloring or lines, hence "redlining." The designations were typically applied to areas with large non-white and/or economically disadvantaged populations, and resulted in people who lived in or wanted to move to these areas being denied loans, or only being provided loans on much worse terms than their counterparts who could access non-redlined areas, due to their ethnicity or higher economic status.

Because redlining practices were contemporaneous with segregationist race-restricted deeds that largely locked minorities out of non-redlined neighborhoods, most non-white

⁴¹ Zuk, M., & Chapple, K. (2015). Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

⁴² Karen Chapple's February 25, 2019 letter to Berkeley City Council in support of this proposal. <https://www.berkeley.com/wp-content/uploads/2019/02/Letter-on-Council-Item-22-Chapple-2.25.19.pdf>

⁴³Ibid.

households were effectively forced to live in areas where buying and/or improving residential property was extremely difficult. Consequently, low-income and minority families were often locked out of homeownership, and all the opportunities for stability and wealth-building that entails. Therefore redlining tended to reinforce the economic stagnation of the areas to which it was applied, further depressing property values and leading to disinvestment. Although redlining is no longer formally practiced in the fashion it was historically, its effects continued to be felt in wealth disparities, educational opportunity gaps, and other impacts.

One way in which the practice of redlining continues to be felt is through the continuation of exclusionary zoning. By ensuring that only those wealthy enough to afford a single family home with a relatively large plot of land could live in certain areas, exclusionary zoning worked hand in hand with redlining to keep low-income families out of desirable neighborhoods with good schools and better economic opportunity. Cities, including Berkeley, adopted zoning that effectively prohibited multi-family homes in the same areas that relied on race restrictive deeds to keep out non-whites, meaning that other areas, including redlined areas, were more likely to continue allowing multi-family buildings.

Ironically, because these patterns of zoning have persisted, many areas that were historically redlined are now appealing areas for new housing development precisely because they have continued to allow multi-family homes. Any area which sees its potential housing capacity increase will become more appealing for new housing development. When these changes are made in historically redlined areas where lower-income and minority households tend to be more concentrated, it is especially important to ensure those policies do not result in displacement or the loss of rent-controlled or naturally affordable housing units.

ALTERNATIVE ACTIONS CONSIDERED

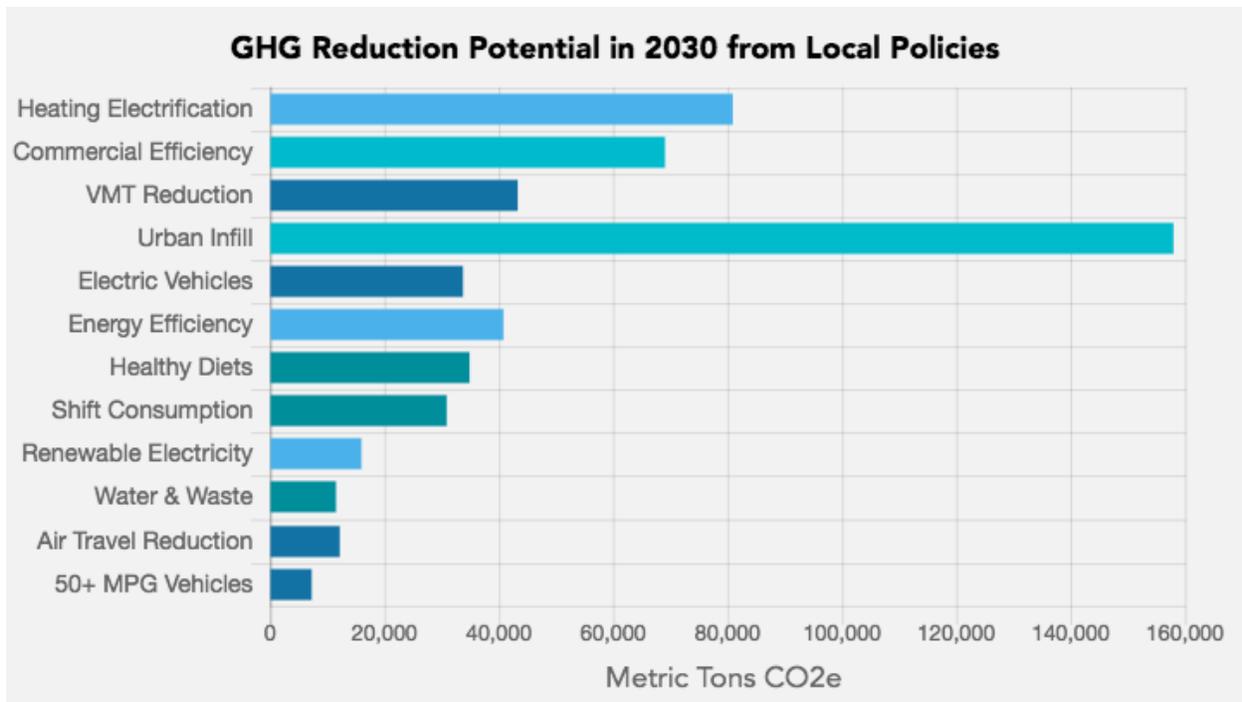
The authors considered passing a budget referral to fund another study for missing middle housing. However, given the new Regional Housing Needs Allocations and the scarcity of housing for individuals and families throughout the Bay Area, we felt the need to act immediately and not wait to study this issue.

FINANCIAL IMPLICATIONS

Costs for consultants to provide additional analysis can range from \$25,000-\$100,000. Staff should also consider augmenting existing work on the Housing Element update and density standard study to align with the objectives of this legislation.

ENVIRONMENTAL SUSTAINABILITY

Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”⁴⁴ The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.



CONTACT PERSON(S):

Lori Droste, 510-981-7180

ATTACHMENTS/LINKS:

Minneapolis Plan:

https://minneapolis2040.com/media/1428/pdf_minneapolis2040_with_appendices.pdf

Seattle Plan:

⁴⁴ “Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities.” Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen. Urban Planning (ISSN: 2183-7635) 2018, Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

<http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/SPCNeighborhoodsForAllFINAL121318digital.pdf>

Sacramento's Plan:

https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=4822&meta_id=612624

Berkeleyside

Opinion: We can design our way out of Berkeley's housing crisis with 'missing middle' buildings

A Berkeley architect argues that Berkeley should build more small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments.

By Daniel Parolek

Dec. 19, 2017

Berkeley's housing problems have gone national recently, as The New York Times' Conor Dougherty highlighted in a thought-provoking article, "The Great American Single-Family Home Problem." Dougherty examines the conflicting interests and regulations that threatened to halt the development of one lot on Haskell Street, and shows how those conflicting forces are contributing to the affordable housing crisis we are seeing in our state – and across the country.

As an architect and urban designer based in Berkeley for the past 20 years, I agree that California municipalities have an urgent need to deliver more housing. That said, just delivering more housing is not enough. We need to think about how this housing reinforces a high quality built environment and how to provide a range of housing for all segments of the market, including moderate and low-income households. More small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments, or what I call "Missing Middle Housing," should be a key focus of that housing.

Unfortunately, the design proposed for the Haskell Street site in Berkeley does not deliver on reinforcing a high quality built environment or affordability and, as the NYT article makes clear, does not deliver on any level of affordability. There are better design solutions that deliver a more compatible form, that have more and a broader range of housing units, and that can be more effective at building local support for this and similar infill projects.

For example, the 50' x 150' lot at 310 Haskell Street is big enough to accommodate a traditional fourplex, with two units down and two units above in a building that is the scale of a house (see image attached from our Missing Middle research). The units would typically be between 750-900 square feet each. An important characteristic of this housing type is that they do not go deeper onto the lot than a traditional house, thus eliminating the concern about privacy and shading and providing high-quality outdoor

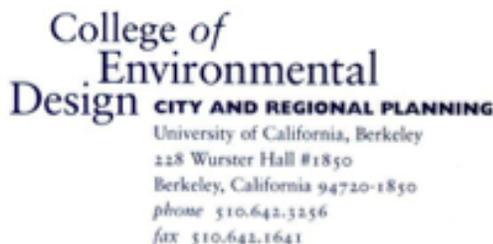
living spaces. These fourplex housing types exist all over Berkeley and are often successfully integrated onto blocks with single-family homes.

So how do we get there? Berkeley and most cities across the country need to sharpen their pencils on their outdated zoning codes, first to remove barriers for better solutions and secondly, to create a set of regulations that ensure that inappropriate design solutions like the one proposed for Haskell Street or even worse are not allowed on these sites. Lower densities do not equal better design solutions and higher densities do not need to mean larger or more buildings. This is a delicate balance that few zoning codes achieve and few code writers fully understand.

We also need to change the way we communicate about housing needs in our communities. If we are using George Lakoff's rules for effective communication we would never go into a housing conversation with a community and use terms like "increasing density, adding multi-family, or upzoning a neighborhood." I can think of few neighborhoods that would feel good about saying yes to any of those options if they were framed in that way, but which can mostly get on board with thinking about aging within a neighborhood, or ensuring their kids or grandkids can afford to move back to the city they grew up in. Beginning this conversation by simply showing photographic and/or local existing documented examples of good Missing Middle housing types often disarms this conversation and leads to more fruitful results.

Berkeley's challenges related to housing are not going to go away anytime soon. We need to thoughtfully remove barriers to enable a broad range of solutions like the fourplex that have been a core part of choices provided in our communities already and learn how to effectively build consensus and support for good design solutions such as Missing Middle housing types.

Daniel Parolek is an architect and urban designer who co-authored the book "Form-Based Codes," coined the term Missing Middle Housing (www.missingmiddlehousing.com) and speaks and consults nationally on these topics.



February 25, 2019

Honorable Mayor and City Council members:

I am writing to convey my strong support for the "Missing Middle Report" on your 2/26 Council meeting.

As the Council item co-authored by Councilmembers Droste, Bartlett, Kesarwani, and Robinson points out, Berkeley's housing crisis today is a legacy of its past racist and exclusionary practices. I commend their effort to push Berkeley to confront its history in order to build a more inclusive future.

Our research at the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC) and today's patterns of residential displacement and exclusion.¹ Overall, 83% of today's gentrifying areas in the East Bay were rated as "hazardous" (red) or "definitely declining" (yellow) by the HOLC, and 75% of today's exclusionary areas in the East Bay were rated as "best" (green) or "still desirable" (blue) by HOLC. Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today.

Should Berkeley elect to proceed to study the potential for zoning reform, it will be in good company. As the item authors note, Minneapolis and Seattle are already experimenting with ways to open up single-family zones, and Berkeley should be leading the charge as well.² Zoning reform has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today.

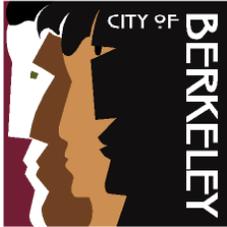
I urge you to vote yes on Item 22 to request a Missing Middle report. Please do not hesitate to call on me if any research on zoning impacts or alternatives is needed.

Sincerely,

Karen Chapple
Professor, City and Regional Planning
Carmel P. Friesen Chair in Urban Studies
Faculty Director, The Urban Displacement Project

¹ See <http://www.urbandisplacement.org/redlining>

² Interestingly, leading the charge in Minneapolis is City Council President Lisa Bender, a graduate of UC-Berkeley's Department of City and Regional Planning.



Office of the Mayor

ACTION CALENDAR

March 10, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Tenant Opportunity to Purchase Act, Adding BMC Chapter 13.89

RECOMMENDATION

1. Adopt a first reading of an ordinance adding Berkeley Municipal Code Chapter 13.89, the Tenant Opportunity to Purchase Act (TOPA), that will take effect on final adoption with an implementation start upon completion of Administrative Regulations and funding of related program costs; and
2. Direct the City Manager to take all necessary steps to implement this chapter including, but not limited to:
 1. Developing Administrative Regulations;
 2. Preparing an implementation strategy;
 3. Identifying resources to align databases from Finance, Planning, and the Rent Board to accurately reflect the properties that would be subject to TOPA;
 4. Determining necessary staffing for program administration and hearing officers for adjudication;
 5. Timelines for project “roll-out”;
 6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and recommending possible funding sources;
 7. Quantifying an annual program budget and referring such program costs to the June 2020 Budget process.

SUMMARY

TOPA is a policy that empowers tenants to determine the future of their housing when an Owner is ready to sell, by giving tenants the opportunity to collectively purchase the property they live in. It does this by creating legal rights for tenants to purchase or assign rights to an affordable housing developer, and providing technical assistance, education, and financing to help make these purchases possible. TOPA provides a way to stabilize existing housing for tenants and preserve affordable housing in Berkeley. It

also creates pathways for tenants to become first-time homeowners and facilitates democratic residential ownership. TOPA will apply to all rental properties in Berkeley, subject to a number of exemptions, including owner-occupied Single Family/Owner Occupied properties, including those with an Accessory Dwelling Unit (ADU) or other secondary dwelling unit, that do not have a homeowner exemption registered with the County Tax Assessor.

The first right to purchase is conferred to tenants, and includes a right of first offer, right of first refusal, and a right for tenants to assign rights to a qualified affordable housing organization. If tenants waive their rights, the list of qualified affordable housing organizations have a second opportunity to purchase the property within shorter timelines. Qualified affordable housing organizations must be committed to permanent affordability and democratic residential control. Assigning rights in this manner also benefits the affordable housing developers, especially community land trusts, as the tenant buy-in is often critical to the successful management of the property.

The policy is designed to maintain properties purchased under TOPA as permanently affordable for future generations. Any TOPA property that receives City investment would be deed restricted to ensure that the property remains permanently affordable. TOPA properties that are purchased without City investment would also have a deed restricted upper limit for property appreciation. This would result in the accessibility of those properties to serve tenants around 80% AMI.

Multi-tenant buildings that include a mix of TOPA buyers and tenants who wish to continue renting will be required to ensure tenant protections and the enforcement of tenant's rights. This will prevent any internal displacement caused by the exercising of TOPA rights.

TOPA sales have longer escrow periods in order to provide tenants time to organize, engage technical assistance, form an organization that would qualify for financing, and obtain the necessary financing to close a transaction. In order to incentivize owners to participate in a TOPA sale, since it may potentially take more time, upon close of escrow the City would refund to the seller the City's portion of the Real Property Transfer Tax (.75%) not including the proportional amount attributed to Measure P. Recent transactions, including asking vs. sales price and days on the market were gathered from *Zillow* and provided in Attachment 2.

Moving forward a TOPA policy will require detailed Administrative Regulations and a well-funded infrastructure to administer and enforce the policy. There is also a vital need to provide adequate education, legal and technical assistance to tenants as part of the implementation. Finally, a more robust and vibrant acquisition fund will be required that can work efficiently with the TOPA ordinance. This funding could be accommodated through the Small Sites Program with potential funding coming from

Measure U1 tax receipts, the Housing Trust Fund, and Measure O or through another funding mechanism including grants.

BACKGROUND

Since 2015, Mayor Arreguin and community-based organizations such as the East Bay Community Law Center (EBCLC) and Northern California Land Trust (NCLT) have been researching TOPA's effectiveness as an anti-displacement strategy in Berkeley, to be paired with a robust Small Sites acquisition program.

On February 14, 2017, Mayor Arreguin introduced a Council item entitled "*Small Sites Acquisition Program and Tenant Opportunity to Purchase Act*"¹ which among other provisions, referred to the City Manager to:

Review and develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act that offers existing tenants the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.

On May 30 and November 28, 2017, the Berkeley City Council adopted the "*Affordable Housing Action Plan*"² which included a referral to staff to develop a Tenant Opportunity to Purchase Ordinance (TOPA) modeled after a Washington DC law that was enacted in 1980. On June 11, 2019, City staff returned to Council with an Information item³ that outlined its research and discussed the administration and implementation requirements. This item was referred to the Agenda & Rules Committee for scheduling at a future Council meeting. On September 24, 2019, the information item was included on the Consent Calendar with an action of "received and filed".

Since the last date of Council action, the Mayor's Office has been working to develop a TOPA ordinance, which has been drafted by the East Bay Community Law Center (EBCLC), with a diverse group of stakeholders including EBCLC, the Northern California Community Land Trust (NCLT), Bay Area Community Land Trust (BACLt), tenant advocates, legal professionals that specialize in tenant rights, experts familiar with the Washington DC policy and its implementation history, and City of Berkeley staff from the City Attorney's Office, Planning Department, HHCS, Finance and the Rent Board.

Additionally, in September 2019, City Planning staff and the East Bay Community Law Center applied for a grant from the San Francisco Foundation as part of the Partnership

¹ https://www.cityofberkeley.info/.../2017-02-14_Item_18b_Small_Sites_Acquisition.aspx

² https://www.cityofberkeley.info/.../2017-11-14_Item_26_Implementation_Plan_for_Affordable_Housing.aspx

³ https://www.cityofberkeley.info/.../2019-06-11_Item_50_Referral_Response_Tenant_Opportunity_to_Purchase.aspx

for the Bay's Future initiative. The Grant purpose was to be used for technical assistance to jurisdictions for projects focused on protection and preservation of affordable housing that result in measurable benefits for tenants. Staff applied for the grant in response to the Berkeley City Council directive, in part, to develop a TOPA policy as part of the City's Housing Action Plan (HAP), adopted in 2017.

On February 4, 2020 the San Francisco Foundation officially announced the awards, one being the City of Berkeley and the East Bay Community Law Center, for the purposes of developing a Tenant Opportunity to Purchase ordinance and a Local Housing Preference Policy.⁴

CURRENT SITUATION AND ITS EFFECTS

Housing Affordability and Regional Impacts

At the end of 1998, just before State-mandated vacancy decontrol took effect, the average rent in Berkeley's 20,000 apartments built before 1980 was \$720 a month. Twenty years later the average rent for these same units is \$1,956. If rents had risen only by the rate of inflation, they would average \$1,150 a month. In the last five years alone, rents have increased by 50 percent. Similarly, in 2000 the median home price in Berkeley was \$380,000, rising to \$704,000 in 2013 and by 2019 it had reached \$1,300,000.⁵

Rents in Berkeley and the greater Bay Area continue to rise, with low vacancy rates.⁶ Future trends are indicating additional loss of naturally occurring affordable housing, according to the County of Alameda Regional Analysis of Impediments to Fair Housing Choice (IFHC). As an example: for decades, a 13-unit complex on Solano Ave. housed a mix of residents — including, teachers, business owners and a 96-year-old woman. The property is rent-controlled and subject to Berkeley's eviction protections, but the owners invoked the Ellis Act that permits full-building evictions if the property is removed from the rental market altogether (the owners intend to convert the building to a "tenancy-in-common" and sell the units at market rates).⁷

Anecdotal research, received from local real estate brokers over the past two months, indicate a desire to increase returns on investment as well as concerns about buyers moving away from the multi-unit property market.⁸ Due to rent control, tenant protections and eviction laws some owners are looking to sell multi-unit properties, however existing tenant rents impact the sales price. Some of the methods being utilized to raise rents, and therefore increase the property value for sale, include paying

⁴ <https://sff.org/partnership-for-the-bays-future-marks-one-year-anniversary/>

⁵ [Housing for a Diverse, Equitable and Creative Berkeley, July 16, 2019](#)

⁶ <https://www.huduser.gov/portal/publications/pdf/OaklandCA-comp-17.pdf>

⁷ <https://www.berkeleyside.com/2019/12/10/theyve-been-evicted-from-a-north-berkeley-building-now-they-want-to-buy-it-with-help-from-a-land-trust>

⁸ <https://www.fool.com/millionaires/real-estate-market/articles/8-real-estate-market-predictions-2020/>

tenants to move out of the building, evictions for cause (when a case can be made), owner-move-in evictions, and Condo/Tenants-in-Common conversions.

Economic Factors

As the Bay Area region experiences increased economic growth and a high demand for housing, this growth is causing housing prices to rise that then displaces low-income residents. As seen throughout the IFHC report, low-income residents tend to also be minority residents. Therefore, continued growth of the region could lead to more displacement of minority residents and increased segregation unless certain actions are taken to encourage economic and racial/ethnic integration and access to stable affordable units in a range of sizes. Contributing factors affecting disproportionate housing needs include:

- Lack of private investments in specific neighborhoods
- The availability of affordable units in a range of sizes
- Displacement of residents due to economic pressures
- Limited supply of affordable housing within neighborhoods
- Lack of economic support for low income home ownership

The National Low-Income Housing Coalition (NLIHC) *2018 Out of Reach Study* listed the Bay Area region as one of the least affordable areas in the United States. To be able to afford a two-bedroom market rate unit in Alameda County, a household would need to earn \$44.79 per hour or \$93,163 annually (“housing wage”). Comparatively, the average housing wage for California is \$32.68 per hour or \$67,974 annually.

Regional Policy 6, as recommended by the IFHC, is to:

Increase homeownership among low- and moderate-income households by allocating funds for homeownership programs that support low- and moderate-income households. This would include down payment assistance, first time home buyer programs, Mortgage Credit Certificate, below market rate (BMR) homeownership programs and financial literacy and homebuyer education classes. There is also a requirement to promote the programs and any other existing programs through marketing efforts.⁹

National Research on Ownership

While today’s economy is strong and job growth high, there is a growing gap between rates of economic growth and the levels of income. Wages can be growing but not at the same rate as the economy. Many low to middle income people do not have enough money to cover the basic needs due to rising costs – especially in housing. These lower

⁹ <http://www.acgov.org/cda/hcd/documents/Draft-AI-Combined2019-10-24.pdf>

earnings lead to fewer assets and less wealth. For most Americans the greatest source of their wealth is their home, but home ownership is considerably lower than in past decades. Among African Americans, home ownership has decreased to a 60-year low.¹⁰

Providing ownership options for tenants is a mechanism to sustain affordability. According to the *Urban Institute's Opportunity and Ownership Project*, creating ownership within existing rental units provides opportunities for low income renters that will keep their housing costs stable over many years. They suggest that, rather than providing housing subsidies at the Federal and State level for new construction, investing in existing housing would provide many more units at an affordable level (new construction – especially in a good economy – is increasingly expensive).¹¹

Further academic analysis from the *Joint Center for Housing Studies, Harvard University* states: “Public policies attempt to subsidize these barriers to home buying for low-income people through tax policies, grants and other strategies. Current policies are, at best, inefficient and inequitable, and, at worst, ineffective. A more systematic approach would adhere to a set of operating principles including achieving scale, focusing on moving renters to ownership, targeting subsidies to underserved populations, creating incentives for repayment, and maximizing efficiency”.¹²

City of Berkeley Housing Policies and TOPA Opportunity

Housing development has accelerated in Berkeley and while new permits issued from January 1, 2017 through December 31, 2018 exceed Regional Housing Needs Allocation (RHNA) requirements for above moderate incomes by 141%, affordable housing development is well below regional goals. The following table shows Berkeley's progress toward its RHNA goals through December 2018.¹³

¹⁰ <http://wbur.org/hereandnow/2020/02/10/job-economy-middle-class>

¹¹ <https://www.urban.org/sites/default/files/publication/46626/411523-Promoting-Homeownership-among-Low-Income-Households.PDF>

¹² <https://www.jchs.harvard.edu/sites/default/files/hbtl-08.pdf>

¹³ [Item 13 Annual Housing Pipeline Report](#)

Progress towards 2014-2022 RHNA: Approved Building Permits January 1, 2014 – December 31, 2018							
Building Permit Action Year	Ext Low <30% AMI	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total
January 1, 2014 – December 31, 2018	0	174	66	0	240	1,975	2,215
RHNA	266	266	442	584	1,558	1,401	2,959
Remaining RHNA Capacity Requirement	266	92	376	584		-574	
Percent of Goal Achieved	0%	65%	15%	0%		141%	
The current RHNA is for an 8.8-year period, from January 1, 2014 through October 31, 2022.							

Housing affordability is the first objective of the *Housing Element of the City of Berkeley General Plan*. Policy H-1 - Extremely Low, Very Low, Low, and Moderate-Income Housing sets the goal of increasing housing affordable to residents with lower incomes and outlines a number of actions to achieve this goal, including encouraging incentives for affordable housing development.¹⁴

The Berkeley City Council, in the referenced *Housing Action Plan* (HAP), stated support for Non-profit housing developers and Community Land Trust acquisition of property to stabilize rents through a Small Sites Program. Two such recent transactions, at 2321-2323 Tenth Street and 1640 Stuart Street, have resulted in maintaining 16 units at below-market rates. This policy also stated consideration for the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. This program was initially funded through Measure U1 tax receipts with an option of also utilizing Housing Trust Fund resources.

Until 1996, Berkeley condominium conversions provided the tenants a first right to purchase their unit, as did policies in Santa Monica whose policy was more far reaching.

TOPA working group members estimate that approximately 42% of all Berkeley residential properties would fall under TOPA. This estimate was based on an analysis of the property type, homeowner exemption and number of units from the 2018/2019 Alameda Property Tax roll. It is not reflective of the total **number** of units that would benefit from a TOPA Ordinance. (See Attachment 3).

Washington D.C. TOPA

Washington D.C. passed the Tenant Opportunity to Purchase Act (TOPA) in 1980. This policy regulates the conversion of use, sale and transfer of rental housing. Tenants have the first right of refusal to purchase their buildings and also can assign their rights to third parties, such as affordable housing developers. The impact of this policy has been immense with approximately 30% of annual multi-unit sales going through the

¹⁴ https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Housing_Element.aspx

TOPA process. Since 2002, this policy has helped preserve over 3,500 units of affordable housing, 2,000 of which have been preserved since 2013.¹⁵ The growing impact of TOPA is due to massive and sustained increases in DC's Housing Production Trust Fund, collaborative efforts to identify and harness other funding/financing, as well as sustained support for the community based organizations that help tenants understand and exercise their TOPA rights.

In order to fund the program, Washington DC dedicates \$10M per year in Housing Trust Fund (HTF) allocations directly to TOPA and the Housing Production Trust Fund which has \$40M for affordable housing preservation.

TOPA has also helped to create many limited equity cooperatives (LECs) in DC, which currently number 4,400 units across 99 buildings.¹⁶ The DC Limited Equity Cooperative Task Force, formed in 2018, came out with recommendations in October 2019 to increase the number of LEC units in DC by 45% by 2025 (additional 2000 units). TOPA will be a major vehicle to create these additional units. The task force has also identified how to improve/expand existing policy, financing and technical assistance to support the health of existing and future LECs.

Finally, TOPA has led to the creation of hundreds of tenant associations across Washington, DC. Many of these tenant associations were the main leaders and organizers in creating the DC Tenants Union in 2019.¹⁷ The Tenants Union is focused on supporting rent control and other tenant protection policies and plans to build power and solidarity across tenant associations from different parts of the city. (See Attachment 4)

San Francisco COPA¹⁸

In April 2019, the San Francisco Board of Supervisors passed, by a unanimous vote, the Community Opportunity to Purchase Act (COPA). COPA is designed to stabilize communities by preventing displacement and preserving affordable housing and applies to the sale of any non-condo residential building of 3 or more units. It gives qualified non-profit organizations a right of first offer prior to the property going on the market and a right of first refusal when the owner has a bona fide offer from a potential buyer.

Nonprofit buyers have a limited time (25 days) to work with tenants, exercise their rights under COPA and enter into a Purchase-Sale agreement. Recent articles are indicating challenges to the prescribed timeframes.¹⁹ While a seller is not required to accept the

¹⁵ https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf

¹⁶ <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>

¹⁷ <https://www.streetsemmedia.org/article/dc-residents-launch-a-city-wide-tenant-union-in-hopes-to-foster-solidarity-across-the-district/#.XjSX3i2ZOt8>

¹⁸ <https://sfmohcd.org/community-opportunity-purchase-act-copa>

¹⁹ <https://www.sfchronicle.com/bayarea/article/City-officials-want-landlord-to-delay-sale-of-76-15002958.php>

offer, the qualified nonprofit also has a right of first refusal to match a competing offer. At closing, deed restrictions are placed on the building restricting the building to affordable housing for the life of the building with a mean value of rents not to exceed 80% AMI.

The building could eventually be transferred to tenant ownership under a Limited Equity Cooperative or other model, as long as permanent affordability deed restrictions are maintained. The ordinance includes incentives, including partial exemption from the City's transfer tax and the potential for qualified nonprofits to facilitate sellers' efforts to obtain federal tax benefits.

San Francisco will set aside \$40M – 90M in a specific MOHCD fund to support first time home buyers and its Small Sites Program that could also support the COPA ordinance. This fund provides resources for deposits, down payments and bridge loans until permanent financing is in place.

Oakland TOPA

Inspired by the Moms-for-Housing advocates, on January 30, 2020 at the Oakland City Council's Rules and Legislation Committee meeting, a TOPA ordinance was introduced and is scheduled for a vote in the Community and Economic Development Committee in March 2020. From there it could go to a full City Council vote.²⁰ Oakland Mayor Libby Schaaf has already expressed support for the ordinance.

The Oakland ordinance has been developed since 2018 by a group of community land trusts, tenant advocacy organizations, and the East Bay Community Law Center, whose draft ordinance for Berkeley provided a foundation for Oakland's ordinance. The Oakland ordinance largely mirrors this proposal but will also reportedly include a COPA option for non-profits to buy vacant properties.

The political will for TOPA in Oakland was prompted by Moms 4 Housing — a group of homeless women who took over an empty, investor-owned house in West Oakland for two months before they were evicted and arrested. Their actions garnered national attention and symbolize the Bay Area's housing and homelessness crisis.

Since the eviction of the Moms 4 Housing, the property owner has agreed to negotiate to sell the house to the nonprofit Oakland Community Land Trust. They have also agreed to give the land trust or other nonprofits a chance to buy dozens of other single-family homes it owns in Oakland.

New York State TOPA

At the end of January 2020, New York State Sen. Zellnor Myrie, who represents Central Brooklyn, announced that he is in the process of drafting new legislation that would give

²⁰ <https://www.mercurynews.com/2020/01/30/oakland-councilwoman-to-introduce-moms-4-housing-inspired-ordinance/>

tenants the first right to buy their landlord's property should it come up for sale. Myrie stated that "Landlords who claim they will be unable to keep their buildings in good repair or cover the cost of capital improvements" would have an opportunity, in the New York rent-regulated market, to "keep tenants in their homes, create a path to ownership and maintain buildings,"

This Tenant Opportunity to Purchase Act is said to be modeled after right-of-first-refusal statutes in Washington D.C.²¹

Financing for TOPA projects

Financing for TOPA projects is expected to be provided from a combination of city subsidies, the private capital of tenants, and loans from community-oriented banks and lending institutions like credit unions, CDFIs, local banks, future public banks and others. In this sense, TOPA effectively leverages both private and public financing in advancing permanent affordability.²²

Subsidies

In order to make TOPA effective and responsive to the full scale of anticipated community needs²³, the City will need to enlarge the current Small Sites Program (SSP), or create a new fund, to a minimum of \$10-15 million dollars per year and reconfigure SSP guidelines to align with TOPA. While TOPA projects can benefit from existing streams of affordable housing funding, the scale of community need far outweighs the existing funding sources. As demonstrated by the case of the D.C. TOPA, it was only with substantial financing added to its Housing Production Trust Fund that the ordinance became an effective way to prevent and fight displacement - DC has an annual \$116M for their Housing Production Trust Fund (HPTF), with a minimum of \$10M set aside for TOPA projects. However, D.C. typically spends more out of its HPTF on TOPA - in FY2018, DC spent close to \$22.5M on TOPA acquisition projects with additional funds for rehab in some instances (449 units over 9 projects). Without similar enhancement of SSP, or another funding source, TOPA will not be able to produce the necessary impactful levels of affordability needed to meet the crisis, particularly for those

²¹ <https://therealdeal.com/2020/01/31/bill-make-landlords-give-tenants-first-shot-to-buy-buildings/>

²² While financing percentages of each project may vary substantially according to building costs, tenant resources, and subsidy availability a combination of these financing streams is expected to be a part of most if not all TOPA projects.

²³ 2019 real estate transaction data for Berkeley show that approximately 250 multi-unit buildings (duplexes and up) sold. Assuming similar sales volume and that a similar percentage (32%) of tenant groups exercise their right to purchase as under the D.C. ordinance we anticipate potentially 80 projects annually, with a greater number of smaller unit buildings participating than occur in DC.

of very-low, low and moderate income who may not be able to leverage their own private capital to get a loan.

Private Capital of Tenants

Single family home households and tenants of multi-unit buildings with mixed income units would be able to purchase buildings on their own or with smaller amounts of subsidy involved because these tenants will most likely be able to pay a higher debt service coverage ratio in order to obtain a mortgage from an institutional lender to acquire a property. This could allow higher income tenants with private capital to assist lower income tenants with less capital by securing a blanket mortgage to purchase the building for mutual benefit. This would also benefit “missing middle” income tenants who may not be able to purchase homes on their own, in the current market, but might have enough private capital saved to contribute to the purchase of their building.

Loans from Institutional Lenders

Many banks are willing to work with re-sale restricted properties such as those created by TOPA, the majority of which are local commercial lenders, credit unions, cooperative banks, and Community Development Finance Institutions (CDFIs).²⁴ However, even mainstream primary lenders have told community partners (NCLT & BACLt) that there is no inherent obstacle to lending to resale restricted properties such as a community land trust (CLT)²⁵ or limited equity housing cooperative (and LEHC) since they are valid forms of California non-profit corporation. In fact, many mainstream primary lenders have provided CLT loans for single family homes.²⁶ Additionally, there is nothing to prevent newly formed tenant organizations from acquiring property collectively as it is not uncommon for lenders to process and begin underwriting loan applications from newly formed corporate entities during the acquisition phase. While the most common form of ownership is an LLC, there have also been many instances of newly created 501(c)3 non-profit corporations like the non-profit public²⁷ or mutual benefit²⁸ corporation, the legal entity that is the basis of the limited equity housing cooperative, which have been successful in acquiring loans.²⁹

²⁴ For example Clearinghouse CDFI, Community Bank of the Bay, National Housing Trust, Capital Impact Partners, Heritage Bank (formerly Presidio Bank), and the Local Initiatives Support Corporation (LISC).

²⁵ https://www.lisc.org/media/filer_public/f0/e0/f0e07be0-1ca5-4720-b78c-3a0d7a0181dd/022519_white_paper_community_land_trusts.pdf

²⁶ http://www.freddiemac.com/singlefamily/land_trust_mortgages_faq.html, <https://groundedsolutions.org/tools-for-success/resource-library/mortgage-financing-options>

²⁷ http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CORP§ionNum=5151.

²⁸ https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CORP&division=2.&title=1.&part=3.&chapter=&article=

²⁹ For example: Derby Walker House in Berkeley, California and Columbus United in San Francisco CA.

An important factor to note is that the loans that would be provided to TOPA tenants are commercial loans, not consumer loans, because the borrower is not a natural person, but rather a corporate entity (even though the owners of the entity will be owner-occupants of the property), which means they are for a shorter term of 10-15 years. The loan approval process for such commercial loans, from lenders willing to loan on such re-sale restricted properties, tends to range from 90 to 120 days depending on the lender & lender type (e.g. CDFIs tend to take longer). The most limiting factor in this estimate is the ability of the borrowing entity (the tenant group) to timely respond to lender's underwriting requests. This variable can be dramatically improved and streamlined with a robust technical assistance program through the City and Supportive Partners.

The most important considerations for an institutional lender in underwriting a loan for a tenant organized entity (including LEHCs³⁰) will be:

Repayment of the Loan: First and foremost, the lender will look at the fair market value of the underlying property (that there is adequate loan to value ratio); and secondly, they look at net operating income of the property, and that there is adequate debt service coverage ratio. In other words, the primary underwriting is of the property itself, similar to how a lender would look at a residential rental property.

Viability & Validity of the Borrowing Entity: As stated above, the lender can start the loan review and underwriting process while the entity is still being formed. However, they will require that the Articles of Incorporation have been filed to start the process. A condition of loan closing will be that the entity is duly formed (i.e. that the Secretary of State has approved the Articles, typically a 30-day process; and that all other governing docs, such as by-laws, have been finalized). This condition being met will also be necessary for the entity to properly take title.

Stability of Property/Asset Management: This is determined by the capacity of the tenants to manage and maintain the property, fill vacancies, properly budget income & expenses for the property. In self-managed properties, banks will look to the experience of the individuals, their internal property management plan, and any partnerships/alliances with outside property management firms or organizations. A second option is for the tenant organization to hire a professional property management firm, which can be an expedient way to get loan approval

³⁰ <https://groundedsolutions.org/sites/default/files/2018-11/Limited%20Equity%20Co-ops%20by%20Community%20Land%20Trusts.pdf>

and through the acquisition process, while a tenant group develops the skills and leadership necessary to self-manage in the future.

Credit enhancements, supporting partners and other backstop mechanisms: Many existing resident initiated purchases that were structured in models such as LEHC's and limited equity condominiums overcame underwriting challenges through backstop mechanisms such as a Community Land Trust, other organizational partner and/or municipality providing a credit enhancement such as a loan guarantee or co-signature on the primary mortgage.

ALTERNATIVE ACTIONS CONSIDERED

No Action

Taking no action could, over time, further reduce naturally occurring affordable housing. It would also take away an opportunity for lower income tenants to participate in the ownership of their residence and increase their personal wealth – the historic driver of lower to middle class wealth creation.³¹

No Action would direct Housing Trust Fund, Measure U1 and other assets primarily to the construction of new affordable housing projects. It would also require no investment of other City General Fund/Other Resources in administrative implementation and oversight.

Support the Repeal of Costa Hawkins

For over twenty years, the Costa-Hawkins Rental Housing Act (*California Civil Code Sections 1954.50-1954.535*) has impacted California renters and the affordability of housing. A statewide law backed by the real estate industry that passed in 1995, Costa-Hawkins ties the hands of cities when it comes to protecting tenants and stabilizing rents:

- Cities can't pass vacancy control; if a tenant leaves or is forced out of a rent-controlled unit, a landlord can raise the rent to whatever the market will bear upon new tenancy;
- Cities can't extend rent control to any rented condominiums, single-family homes, and any new housing built after 1995.

Since Costa-Hawkins passed, tenants have paid ever increasing rents and been forced from their communities or into homelessness due to high housing costs. Additionally,

³¹ <https://www.cato.org/publications/policy-analysis/exploring-wealth-inequality#poverty-matters-not-inequality>

since the Great Recession, roughly tens of thousands of single-family home rentals have been purchased by investors all across the state and nationwide.

On October 27, 2015, the Berkeley City Council unanimously adopted a resolution calling on the Governor and State Legislature to repeal the Costa-Hawkins Rental Housing Act.³²

Costa-Hawkins was also a key part of a 2009 court decision, *Palmer v. the City of Los Angeles*, that found that the imposition of local inclusionary housing requirements for rental housing was in conflict with Costa-Hawkins. In 2017, former Governor Jerry Brown signed AB 1505 to restore the ability for California cities to require developers include affordable units in new rental projects. Additionally, in 2019 the State passed historic legislation, AB 1482, which implemented a cap on rents for non-controlled units of 5% plus CPI, and just cause for eviction statewide. These protections will apply to most housing units not currently deed restricted or controlled, including those exempt from rent control under Costa-Hawkins.

There has been movement among tenant rights advocates to repeal Costa Hawkins to give cities the option to expand and strengthen rent control policies. The latest effort is a statewide ballot measure similar to Proposition 10, which California voters rejected in 2018. Should this new measure succeed, cities would still need to go through the process of passing new legislation before the repeal would have any effect.³³

While new statewide rent control legislation might provide some relief to tenants, it is still unknown as to what properties would be included in the legislation, what level of rent increases would be allowed. It would not give tenants an option to participate in the ownership of their properties nor would there be deeded restrictions to provide rent stabilization for years into the future.

Rely on Regional Policy

The current need for deed restricted affordable units in Alameda County is 52,591 according to California Housing Partnership.³⁴ Much work is being done on the regional level to address this crisis. In January 2019, the Metropolitan Transportation Commission (MTC) released the *CASA Compact: A 15-Year Emergency Policy Package to Confront the Housing Crisis in the San Francisco Bay Area*.³⁵ This report was the product of over two years of stakeholder meetings with elected officials, builders, affordable housing developers and other housing professionals to study the root causes and develop solutions to the region's housing crisis. The CASA Compact

³² https://ci.berkeley.ca.us/.../2015-10-27_Item_16_Urging_the_State_Legislature.aspx

³³ <https://la.curbed.com/2018/1/12/16883276/rent-control-california-costa-hawkins-explained>

³⁴ <https://1p08d91kd0c03rlxhmhtydpr-wpengine.netdna-ssl.com/wp-content/uploads/2019/05/Alameda-HNR-2019-Final.pdf>

³⁵ https://mtc.ca.gov/sites/default/files/CASA_Compact.pdf

provides a roadmap for regional action on housing affordability. It recommends a series of policies and programs to Produce, Preserve and Protect housing and renters in the Bay Area. Preservation of existing naturally occurring affordable housing as a key strategy and the plan recommended a variety of regional funding sources to help acquire and rehabilitate existing housing to preserve affordability. This year, the Association of Bay Area Governments (ABAG) and MTC are considering the placement of a regional housing finance measure on the November 2020 ballot.

In addition, ABAG and MTC are currently developing *Plan Bay Area 2050*, the region's Transportation Plan and Sustainable Communities Strategy, which will identify where growth should be concentrated and how to ensure that the Bay Area is affordable, equitable, sustainable and resilient for the future. The Plan will be aligned with the Regional Housing Needs Allocation (RHNA) which will take into account the number of affordable housing units for which each community is responsible for and the number of units required for each income level. Preservation of existing housing is a policy strategy already proposed in the draft Blueprint.

Alameda County Measure A1, the county affordable housing bond approved by voters in 2016, has provided new resources to create new affordable units. Approximately 1,000 new units are in some stage of development. The bond could yield approximately 3,500 affordable units countywide.

While this work is promising, it has a long horizon and the need to maintaining existing affordable housing units is immediate.

Investor Only TOPA Application

An "investor only" approach would craft a TOPA ordinance that would apply to owners with a 50% or greater ownership position in 3 or more rental units within the City of Berkeley.

There is great difficulty in identifying what properties would fall under this approach. Many investors create Limited Liability Companies (LLCs) for legal protection. Without review of the underlying documents, the City would not know the make-up of ownership and whether one or more owners own greater than 50% in each individual property in an LLC or LLCs. There are also many properties that are owned in Trust. The beneficiaries of these trusts could own different percentages of each property and in this situation trust documents would need to be obtained and analyzed for each property owned. While it might be possible to create a database that would identify all rented properties in Berkeley and the ownership entities, the ownership participation and owner names associated with properties could be impossible and could change from property to property.

This approach would require significant resources for enforcement, for a City agency to determine who has a 50% or more ownership interest in every rental property, and to count up the number of rental units owned by each owner to determine which properties TOPA applies to. This could cause confusion by tenants and owners as to the basic question of whether TOPA applies to a given property and could undermine TOPA's effectiveness and usefulness overall.

When analyzing the number of properties that would fall under an Investor Only TOPA, recent property tax rolls were reviewed and sorted by ownership name/entity. The applicability standard with this approach would yield approximately 1/3 the potential properties that would fall under a TOPA ordinance. (See Attachment 2)

San Francisco COPA Model

The San Francisco COPA model would provide a first right to purchase to nonprofit qualified organizations. Tenants do not have a say in the nonprofit provider that will own their building and there are no pathways for tenant ownership or democratic control by the tenants once the property changed hands. SF COPA does not provide the facilitated resident ownership models as does the Berkeley TOPA Ordinance.

Timeframes to respond to exercise the COPA are short and have resulted in lost opportunities.³⁶ Incentives that are available to sellers that participate in the SF COPA have been used as a model for the TOPA Ordinance in Berkeley.

SF COPA does have some valuable elements which have been incorporated into the TOPA ordinance in Berkeley, such as a right of first offer and accompanying incentives to sellers who accept the initial offer, as well as a vetting process for qualified affordable housing organizations who can purchase.

The SF COPA makes more sense given the rental housing stock in San Francisco is generally larger buildings. Utilizing a SF COPA Model for Berkeley would result in 50% fewer TOPA opportunities than the Investor Only TOPA application.

At a time when investor ownership is the greatest percentage of the multi-unit property ownership TOPA, when exercised by tenant organizations, is in keeping with the value Berkeley incorporates into its equity policies.

³⁶ [SF Chronicle, City Officials Want Landlord to Delay Sale](#)

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

City Staff Research

As part of the 2017 referral to the City Manager to create a TOPA policy, City staff in the Health, Housing and Community Services Department (HHCS) conducted research and interviews with a variety of stakeholders about TOPA policy and implementation including:

- Apartment and Office Building Association of Metropolitan Washington
- City of Los Angeles, Office of the Chief Legislative Analyst
- City of San Francisco, Office of Supervisor Sandra Lee Fewer
- DC Association of Realtors
- East Bay Community Law Center
- Housing Counseling Services (City-funded technical assistance provider)
- Latino Economic Development Corporation (City-funded technical assistance provider)
- Washington, DC Department of Housing and Community Development, Rental and Sales Division

The research staff presented the Council informed the development of this ordinance.

Tenant Outreach and Focus Groups

In addition to a number of TOPA workshops conducted for Berkeley community members over the years, EBCLC designed and conducted tenant-centered focus groups for the purpose of eliciting feedback on key provisions of the TOPA Ordinance to inform policy proposals. EBCLC identified key questions, had a purposeful recruitment strategy during which they reached out to a number of tenant organizations to gauge interest in participating, and prepared participants via orientations beforehand to provide background on TOPA and answer any questions. Two focus groups were held with a total of nine participants, and there was a post-focus group survey with additional questions.

With the exception of one homeowner participant, all focus group participants were Berkeley tenants and included three Section 8 voucher holders and almost all were low-income, with varying levels including 80% of AMI, 50% of AMI, and 30% of AMI and below. Participants lived in property types ranging from multi-family to single family, an ADU and senior housing. Out of the four people of color, two identified as Latino/Hispanic, one as Black/African American, and one as Asian/Pacific Islander. An even spread of ages from 25 to 60+ years of age were represented with five participants identifying as female, three as male, and one as non-binary. All participants had some form of high school education, six having at least a bachelor's degree.

Tenants were engaged through presentations, simulations, and written feedback on two core provisions of TOPA: timelines and permanent affordability restrictions. The decision points for the timelines included eliciting feedback on the amount of time it would take to submit a statement of interest and submit an offer. To perform these milestones, tenants were advised that they would need to organize a tenant meeting, gather financial information, and decide on ownership type. The results showed that tenants needed more time across all property types. Considerations for timelines that were raised during focus groups included the time necessary for tenants to build consensus, gather financial information, receive guidance on options of assigning rights vs. purchasing, and learning about first-time homeownership, including a cost-benefit analysis.

Participants identified the following supportive service needs: City-sponsored workshops, financial assistance in the form of subsidy and financial advising, centralized forms and documents regarding a clear articulation of TOPA rights and process, legal assistance, and mediation services especially for multi-family homes. Overall, tenants were excited about the prospect of being able to purchase or assign their rights to an affordable housing organization. However, tenants would like to ensure that non-profits are held to a high standard of care.

Permanent affordability requirements for all TOPA projects were presented, as well as the major trade-offs of equity building and future affordability. Participants were asked for their impressions on the fairness of permanent affordability in exchange for the bundle of rights that TOPA provides to tenants. Overall, there was a strong sense from participants that they would want to use the TOPA rights to buy the property they live in primarily for the purpose of staying there, and that keeping the property affordability for future generations was more important than individual profit gain or reaping a high appreciation on the property. All of the participants agreed that permanent affordability needs to be a part of any TOPA transaction.

General feedback from the focus groups demonstrated that there is support for a TOPA policy, although it is contingent on resources such as financial and technical assistance. There is a strong sense among low-income tenants that technical and financial assistance are necessary for them to exercise their TOPA rights.

The focus groups, despite the small sample size, provided useful feedback to inform the policy. Nonetheless, EBCLC, NCLT, and BACL T intend to continue reaching out to more residents and groups, especially those representing low-income people of color and particularly groups most impacted by the displacement crisis, to do outreach and solicit feedback as necessary.

Lender/financing overview

The TOPA working group has contacted the following banks and lending institutions in recent months: Clearinghouse CDFI, Community Bank of the Bay, National Housing Trust, Capital Impact Partners, Heritage Bank (formerly Presidio Bank), and the Local Initiatives Support Corporation (LISC). Early conversations with these lenders, as reflected previously, indicate that there is interest in funding TOPA projects so long as they meet the necessary requirements. Again, in the case of most lenders, they do not offer 30-year consumer loans for these types of projects, but instead offer the more typical 10-15 year term commercial acquisition loans. However, TOPA working group members have been in conversation with several of these lenders who have interest in creating a new/hybrid type of consumer/commercial loan geared towards the owner-occupants of LEHC properties. This would ideally be a fully amortized 30 year loan, backed by the types of investments which offer the more favorable interest rates typical of consumer (owner-occupied) mortgages. With a solid potential demand for more of these types of loans through TOPA, there could be the momentum needed to persuade lenders to advance this concept.

Research of rental sales professionals

Real estate professionals from four different organizations were interviewed and asked about asking vs. sales price and also length of time the properties were on the market, including escrow time. Additionally, several online resources and articles were reviewed to greater understand buyers of multi-tenant properties and market speculation expectations for 2020. Comments gathered directly from real estate professionals included:

- Berkeley/Oakland property is seen as a safe investment because selling prices don't usually go below asking prices
- Due to rent control, tenant protections and eviction laws investors are looking to move out of property ownership in Berkeley/Oakland
- It is difficult to make improvements on properties due to inability to raise rents and recoup improvement investment costs
- Property desirability depends on tenant occupation, property condition, cash flow, location and zoning (depending on buyers intended use)
- Selling time is longer and price is lower for multi-unit properties with rent-controlled units because it is difficult to make profitable returns on investment
- Larger companies that buy multi-unit properties are often looking to redevelop

Property sale and time on the market, gathered from *Zillow*, is included in Attachment 2.

In order to ensure that TOPA ordinance development would align with the work of the San Francisco Foundation grant, additional outreach will continue during the City

Council Committee process. Feedback from proposed meetings with Berkeley Property Owners Association and BRIDGE Association of Realtors will be included as Attachment 5.

RATIONALE FOR RECOMMENDATION

Taking no action or waiting for significant changes in state rental laws or for more affordable housing production will continue to exacerbate the housing affordability crisis. The need to provide more options for low income tenants is immediate.

Increasing affordable housing is a policy priority for Berkeley. The most cost-effective way to do so is creating sustained affordability within existing housing stock. The recommendation to apply TOPA to all properties with the exception of Single Family/Owner Occupied Residences including those with ADUs, will at least **triple** the number of units that could be made available to tenants under TOPA (compared to other options that were considered). This policy would provide ownership opportunity for low income tenants or stabilize rents, keeping their housing cost affordable for generations. Furthermore, maximizing the number of units that could invoke the TOPA policy would justify the City's investment of resources for purchase, administration and enforcement.

Legislation of a Tenant Opportunity to Purchase Act (TOPA) has inherent and significant benefits for tenants, including:

- Effective anti-displacement tool by giving tenants options to stay in their home
- Creates pathways to homeownership for tenants, thereby helping low-income families of color to have permanency in Berkeley and build equity
- Stabilizes rents and keeps rental properties from converting to market-rate
- Levels the playing field for tenants and affordable housing developers by providing an opportunity for them to purchase properties, and incentivizing owners to sell to them when the owner is ready
- Provides Tenants empowerment and control of their housing
- Preserves existing, naturally occurring affordable units
- Creates more affordable housing by converting rental properties to deed-restricted permanently affordable properties
- Provides an opportunity for tenants to stay in their homes without fear of eviction

Future regional housing policy will require greater accountability for housing production and more requirements to provide affordable units. Converting existing housing stock to affordable units could help Berkeley meet these required housing goals.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

Optimally, the goal for the TOPA policy to be in full force and effect would be following funding in the June 2020 Budget process. In order to meet that goal, additional work must be completed:

- Develop Administrative Regulations. The fellow awarded to the Planning Department by the San Francisco Foundation for the Bay's Challenge Grant will be working with the East Bay Community Law Center in developing the Administrative Regulations and Implementation Plan for the TOPA Ordinance.
- Database development. A consultant should be hired to create an accurate database of all rental properties that will support many other existing programs, such as the Rental Housing Safety Program, Measure U1, Below Market Rate units and measuring RHNA goals. This could be accomplished in much the same manner as the database for short term rentals.
- Program administration, oversight and enforcement. Adequate funding to support the administration, oversight and enforcement must be identified. The Rent Board is willing to assume the role as the administrating body and will also adjudicate any claims of noncompliance through their hearing officer processes.
- Funding for Program Costs. Quantifying adequate project costs, that would be included in a budget referral, are a component of the required actions contained herein. The City must be prepared to fully fund the program however, future State housing incentives and regional philanthropy could help offset City investment and such opportunities should be followed and pursued by the City Manager and the administrating body.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

TOPA aligns with the Berkeley plans, programs, policies and laws in the following way:

City of Berkeley 2019-2020 Strategic Plan

- Create affordable housing and housing support services for our most vulnerable community members
- Champion and demonstrate social and racial equity
- Foster a dynamic, sustainable and locally based economy

Housing Element of the General Plan*Objectives*

- Housing Affordability. Berkeley residents should have access to quality housing at a range of prices and rents. Housing is least affordable for people at the lowest income levels, and City resources should focus on this area of need.
- Maintenance of Existing Housing. Existing housing should be maintained and improved.
- Fair and Accessible Housing. The City should continue to enforce fair housing laws and encourage housing that is universally accessible.
- Public Participation. Berkeley should continue to improve the role of the neighborhood residents and community organizations in housing and community development decision making.

Policies and Actions

- Policy H-1 Affordable Housing. Increase the number of housing units affordable to Berkeley residents with lower income levels.
- Policy H-2 Funding Sources. Aggressively search out, advocate for, and develop additional sources of funds for permanently affordable housing, including housing for people with extremely low incomes and special needs.
- Policy H-3 Permanent Affordability. Ensure that below market rate rental housing remains affordable for the longest period that is economically and legally feasible.
- Policy H-4 Economic Diversity. Encourage inclusion of households with a range of incomes in housing developments through both regulatory requirements and incentives.
- Policy H-5 Rent Stabilization. Protect tenants from large rent increases, arbitrary evictions, hardship from relocation and the loss of their homes.
- Policy H-6 Rental Housing Conservation and Condominium Conversion. Preserve existing rental housing by limiting conversion of rental properties to condominiums.
- Policy H-7 Low-Income Homebuyers. Support efforts that provide opportunities for successful home ownership for residents and workers in the City of Berkeley.
- Policy H-8 Maintain Housing. Maintain and preserve the existing supply of housing in the City.

Affordable Housing Action Plan adopted November 28, 2017:

High Priority #2: Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants the first right of

refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.

Rent Stabilization and Eviction for Good Cause Ordinance

In June 1980, Berkeley residents passed the City's comprehensive rent stabilization law known as the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76). The Ordinance regulated most residential rents in Berkeley and provided tenants with increased protection against unwarranted evictions and is intended to maintain affordable housing and preserve community diversity. However, in 1995, the California Legislature enacted Costa-Hawkins Rental Housing Act. Since that time owners may now set a market rent for most tenancies once a new tenant occupies a unit. While there are some tenants that remain in previous units under the Berkeley Rent Stabilization Ordinance, their rents increase by a set percentage annually. Landlords of rent stabilized units are motivated to get their long tenants to move out, therefore putting these tenants at risk of eviction. TOPA aligns with the spirit of the 1980 law in that it would stabilize the rents in TOPA acquired properties.

Housing for a Diverse, Equitable and Creative Berkeley: Proposing a Framework for Berkeley's Affordable Housing

Referred to the Housing Advisory Commission, Measure O Committee, and Homeless Services Panel of Experts in July 2019, the proposed Framework presents a vision for affordable housing policy and proposes aligning funding streams with existing and new programs. It is intended to guide the work of City Commissions and the Council in implementing Measure U1, Measure O and Measure P and City housing policies. The Framework also sets an ambitious goal of 30% of all housing being dedicated as subsidized affordable housing. Among the many policies and programs recommended, it specifically calls out the acquisition and preservation of existing housing and democratic ownership and control. These strategies are identified as key to preventing displacement, preserving affordability and building wealth. TOPA is also called out as a policy strategy. The Framework is under review by Commissions and has not been adopted by the City Council.

Regional Policies

ABAG and MTC are developing a regional transportation and land use plan to address the region's housing crisis through 2050. Along with determining the allocation by city, it is also looking at revenue generation and financing methods to support the need for low income housing. TOPA could help Berkeley meet its low-income regional allocation and there is also a possibility that funds generated through ABAG policy could help fund some TOPA projects in the future.

FINANCIAL IMPLICATIONS

Revenue impact of Incentive to Sellers

Based on transactions from November 1, 2018 to November 30, 2019, 245 multi-unit residential (including mixed use) properties transferred hands for a total of \$9.65M in base transfer tax revenue. Half of the base transfer tax from these properties is approximately \$4.825M; this would be the amount the City would forgo with the TOPA program.

Total Base Transfer Tax from November 2018 to November 2019 from multi-unit residential properties	\$ 9.65M
Eligible amount for TOPA rebate (1/2 of transfer tax)	\$ 4.83M

% participation in TOPA	Revenue Loss in Millions
100%	\$ 4.83
50%	\$ 2.41
25%	\$ 1.21
10%	\$ 0.48

The City currently has a Seismic Retrofit Refund Program which provides refunds for voluntary seismic upgrades to residential properties. Up to one-third of the base 1.5% transfer tax may be refunded on a dollar-for-dollar basis. This program applies to structures that are used exclusively for residential purposes, or any mixed-use structure that contains two or more dwelling units.

If half of the base transfer tax is given to sellers via the TOPA program, this will have a negative impact on the Seismic Retrofit Refund Program. It should be noted that the Planning Department is making an effort to enhance the seismic program to include other qualifying measures (regarding energy efficiency) that require a permit. The amount available for rebate would significantly be reduced due to the lower base amount once TOPA is implemented.

Cost for Administration, Education, Outreach and Purchase Support

Council can consider additional policies to support TOPA acquisitions that would supplement current funding sources such as: Small Sites Program, Measure U1 tax

receipts, Housing Trust Fund and other government resources that might come in the future. One consideration would be the establishment of a Housing Accelerator Fund similar to that established in San Francisco. Acquisition support could include, but not be limited to, purchase deposits, appraisals, down payment assistance, capital improvements and capital reserves.

Additional resources for implementation, administration, enforcement and adjudication are being referred to the City Manager to determine the appropriate level of funding to support the program:

- Cost of administration (including notices, database management, rental cost history and adjustments for non-ownership units)
- Cost of tenant education/outreach/purchase support/adjudication

The estimates below draw on D.C.'s workload experience and tenant participation rate to generate expected staffing needs. Berkeley and D.C. could have a comparable number of sales each year covered under TOPA, but D.C.'s housing stock features much larger buildings that require more organizing and technical assistance support.

Budget estimates are broken down into 2 priorities:

1. Ongoing staffing support for Supportive Partners
2. Pre-development and project management needs for Qualified Organizations

Staff for "Supportive Partners" (i.e. technical assistance, on-going)

Berkeley's TOPA requires tenants to work with a Supportive Partner in order to exercise their rights to purchase under the policy. Supportive partners function in a supportive role to assist tenants in exercising their rights. This may include education, outreach, organizing, supporting tenants through the purchase, connecting tenants to resources, and counseling tenants on first-time homeownership and collective ownership structures.

Washington D.C. funds the equivalent of 8 FTE staff to provide direct outreach and resident organizing support under TOPA, which is broadly comparable to the scope of work envisioned for the Supportive Partners. This level of staffing support provides assistance for 30 transactions per year. Given the slightly reduced organizing workload with smaller buildings, we anticipate a need going forward for 6 FTE staff in order to adequately and professionally support the anticipated number of tenant groups exploring their TOPA rights and either purchasing or assigning their rights. Expected costs for 6 FTE staff positions for Supportive Partners. Salary costs vary but an anticipated average cost of \$125,000/year per FTE assuming a salary of

between \$60,000 to \$75,000 plus taxes, benefits and insurance was assumed for estimating.

Total: 6 FTE at \$125,000 each = \$750,000

Costs for pre-development work and project management needs of Qualified Organizations (on-going)

An essential part of the program is sufficient project management capacity at the Qualified Organizations to support the development of TOPA projects. Again, referring to the D.C. model, the City helps support the project management capacity via developer fees. Since this capacity was built up over 40 years of TOPA implementation, it is anticipated that Berkeley will need to support start-up capacity and allow for ongoing support through pre-development funds related to specific TOPA projects.

For the first year of TOPA, Qualified Organizations will need to be able to request pre-development funds of ~\$25,000 per project from the City. The City's existing pre-development loan process provides an excellent model for covering the out of pocket costs of projects, but typically does not cover the staffing and project management costs at that phase.

Due to the unique nature of TOPA project staffing, close work with residents is expected to be a substantial portion of the development workload. If there is a large volume of TOPA projects at once, the Qualified Organizations will likely need a mechanism to advance a portion of developer's fees to cover early-stage project management. This could mean that Qualified Organizations serving Berkeley may each need a project manager staff to support the volume of projects.

ENVIRONMENTAL SUSTAINABILITY

Creating and preserving affordable housing in Berkeley will allow lower income individuals and families to live closer to transit and to their workplaces, reducing greenhouse gas emissions. Preserving and refurbishing existing housing stock is an important environmental strategy, as reuse/repair/refurbishment of materials avoids spending resources on a new building construction, and the disposal of construction debris. Finally, increasing affordable housing in Berkeley will make the City more economically and racially equitable, which is a goal in Berkeley's *Resilience Strategy*.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1. Ordinance
2. Zillow Multi Unit Property Sale Information
3. Berkeley Properties and TOPA Applicability
4. DC Apartment Buildings and TOPA
5. [Future feedback from BRIDGE and BPOA]

ORDINANCE NO. -N.S.

TENANT OPPORTUNITY TO PURCHASE ACT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Title

This Ordinance shall be known as the “Tenant Opportunity to Purchase Act”.

Section 2. That Berkeley Municipal Code Chapter 13.89 is created to read as follows:

Chapter 13.89

TENANT OPPORTUNITY TO PURCHASE ACT

Sections

- 13.89.010 Findings**
- 13.89.020 Definitions**
- 13.89.030 “Sale” Defined**
- 13.89.040 Authority**
- 13.89.050 Applicability**
- 13.89.060 Exemptions**
- 13.89.070 First Right to Purchase**
- 13.89.080 Tenant Decision-Making; Tenant Organizations**
- 13.89.090 Qualified Organizations**
- 13.89.100 Supportive Partners**
- 13.89.110 Assignment of Rights**
- 13.89.120 Waiver of Rights**
- 13.89.130 Notice Requirements**

- 13.89.140 Right of First Offer**
- 13.89.150 Right of First Refusal**
- 13.89.160 Third Party Rights**
- 13.89.170 Right to Appraisal**
 - 13.89.180 Contract Negotiations**
 - 13.89.190 No Selling of Rights**
 - 13.89.200 Tenant Protections**
 - 13.89.210 Price Stabilization**
 - 13.89.220 Incentives**
 - 13.89.230 Enforcement**
 - 13.89.240 Statutory Construction**
 - 13.89.250 Administration and Reports**
 - 13.89.260 Severability**

13.89.010 Findings.

- A. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise which leads to displacement of low-income residents.
- B. In April 2019, the average rent for an apartment was \$3,191. To be able to afford a two-bedroom fair market rate unit, a household would need to earn \$44.79/hour or \$93,163 annually. Comparatively, the average for California is \$32.68/hour or \$67,974 annually.
- C. The Department of Housing and Urban Development (“HUD”) sets the income standards for housing vouchers based on the Area Median Income (“AMI”). In 2019, for a Berkeley family of four to qualify as extremely low income at 30% AMI, their income could not exceed \$37,150, very low income at 50% AMI could not exceed \$61,950 and low income at 80% AMI could not exceed \$98,550.
- D. Housing production in Berkeley has accelerated but there remains a significant unmet need for affordable housing for low-income people. Between January 1, 2014 and December 31, 2018, Berkeley permitted 141% above moderate income units (+120% AMI), 0% moderate income units (81-120% AMI), 15% low income units (51 - 80% AMI),

65% very low income units (31 - 50% AMI) and 0% extremely low income units (less than 30% AMI) toward meeting the Association of Bay Area Governments' ("ABAG") RHNA goals.

- E. The current need for affordable housing units in Alameda County is 52,591 units. Approximately 20% of residents in Berkeley are living in poverty.
- F. The lack of affordable housing for Berkeley's low-income communities is resulting in Berkeley residents having no option but to leave the City entirely or risk becoming homeless. Currently, there are an estimated 2,000 people who experience homelessness in Berkeley each year, and in December 2019 the Council extended its declaration of a homeless shelter crisis to January 2022.
- G. Affordable housing preservation and anti-displacement strategies will help keep low income tenants in their homes and is codified in the Berkeley General Plan Housing Element. Furthermore, production and maintaining affordable housing, at all income levels, is a stated priority of the City Council in its Housing Action Plan.
- H. This program finds that in the interest of preventing the displacement of lower-income tenants and preserving affordable housing, it is necessary and appropriate to require that the owners of rental properties in the City offer tenants the first opportunity to purchase and, in some cases defined herein, Qualified Organizations the second opportunity to purchase the property before it may be sold on the market to a third-party purchaser.
- I. The purpose of this chapter is to promote the health, safety, and general welfare of the residents of the City of Berkeley and the economic stability and viability of neighborhoods and ensure protection of the socioeconomic diversity and social fabric of the City.

13.89.020 Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings set forth below. **Unless the context clearly indicates otherwise, the singular term includes the plural and the plural term includes the singular.**

- A. "Accessory Dwelling Unit" (ADU) has the same meaning as in Chapter 23C.24 and includes a Junior ADU.
- B. "Administrative Regulation" means such rules and regulations the City shall issue to further the purposes of this Chapter.
- C. "AMI" means Area Median Income established by the U.S. Department of Housing and Urban Development (HUD), pursuant to 42 U.S.C. Chapter 1427 et seq., to establish local income classification levels.

- D. "Appraised value" means the value of the Rental Housing Accommodation as of the date of the appraisal, based on an objective, independent property valuation, performed according to professional appraisal industry standards.
- E. "Bona fide offer of sale" means an offer of sale for a Rental Housing Accommodation:
 - 1. For a price and other material terms at least as favorable to a Tenant, Tenant Organization, and Qualified Organization as those that the Owner has offered, accepted, or is considering offering or accepting, from a Purchaser in an arm's length third-party contract; or
 - 2. In the absence of an arm's length third-party contract, an offer of sale containing a sales price less than or equal to a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the Rental Housing Accommodation, or an appraised value.
- F. "The City" means the City of Berkeley, including any departments within the City that are assigned any responsibilities under this Chapter.
- G. "City Manager" is defined as the City Manager or his or her delegate
- H. "CPI" means the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward metropolitan area. If publication of the Consumer Price Index ceases, or if it is otherwise unavailable or is altered in a way as to be unusable, the City shall determine the use of an appropriate substitute index published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency.
- I. "Days" means calendar days unless otherwise stated.
- J. "Governing Document" means a constitution, articles, bylaws, operating agreement, or other writings that governs the purpose and operation of a Tenant Organization and the rights and obligations of its members, which shall include provisions on the Tenant Organization's decision-making processes and appointing officers and other authorized agents to act on its behalf.
- K. "Governing Principles" means the governance and management principles stated in a Tenant Organization's Governing Documents.
- L. "Highest and best use" means the reasonably probable legal use of a property that is physically possible, appropriately supported, and financially feasible and that results in the highest value of the property.
- M. "Limited Equity Housing Cooperative" means the form of ownership defined in Section 11003.4(a) of the Business and Professions Code, which limits the increase of share values to below 10 percent annually, as well as prohibits more than 10 percent of the

total development cost of the cooperative housing units to be provided by share purchasers pursuant to Sections 11003.4 and Section 11003.2 of the Business and Professions Code, and that also meets the criteria of Sections 817 and 817.1 of the Civil Code.

- N. "Majority" means an affirmative vote of more than fifty percent (50%) required for decision-making under this Chapter.
- O. "Matter-of-right" means a land use, development density, or structural dimension to which a property owner is entitled by current zoning regulations or law.
- P. "Owner" means one or more persons, corporation, partnership, limited liability company, trustee, or any other entity, who is the owner of record of the Rental Housing Accommodation at the time of giving notice of intention to sell, and each person, corporation, partnership, limited liability company, trustee, or any other entity, who, directly or indirectly, owns 50 percent or more of the equity interests in the Rental Housing Accommodation at the time of giving notice of intention to sell. For purposes of complying with the notice requirements described in this Chapter, "Owner" may refer to any person acting as an authorized agent of the Owner.
- Q. "Qualified Organization" is defined in Section [Qualified Organizations].
- R. "Rent" has the same meaning as in the Rent Stabilization and Eviction for Good Cause Ordinance (section 13.76.040.E). It means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of an Owner under the Rental Agreement.
- S. "Rental Agreement" has the same meaning as in the Rent Stabilization and Eviction for Good Cause Ordinance (section 13.76.040.F). It means an agreement, oral, written or implied, between an Owner and a Tenant for use or occupancy of a unit and for housing services.
- T. "Rental Housing Accommodation" means any real property, including the land appurtenant thereto, containing one or more Rental Units and located in the City of Berkeley.
- U. "Rental Unit" or "unit" has the same meaning as in the Rent Stabilization and Good Cause Ordinance (Chapter 13.76) and accompanying regulation 403. It means any unit in any real property, including the land appurtenant thereto, that is available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with the use or occupancy of such property such as common areas and recreational facilities held out for use by the Tenant.

- V. "Rent Board" or "Board" has the same meaning as in the Rent Stabilization and Good Cause Ordinance (section 13.76.040.A).
- W. "Rent Stabilization and Eviction for Good Cause Ordinance" means Chapter 13.76 of the Berkeley Municipal Code.
- X. "Sale" or "sell" is defined in Section ["Sale" Defined].
- Y. "Single Family Home" means any Rental Housing Accommodation comprised of no more than one Rental Unit, whether or not the Rental Unit has one or more Tenant Households. A Single Family Home includes a condominium dwelling.
- Z. "Supportive Partner" is defined in Section [Supportive Partner].
- AA. "Tenant" means one or more renter, tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or benefits of a Rental Unit within a Rental Housing Accommodation. "Tenant" does not include transient guests who use or occupy a unit for less than fourteen consecutive days.
- BB. "Tenant Household" means one or more Tenants, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or Rental Agreement for all members of the household and other similar characteristics indicative of a single household.
- CC. "Tenant-occupied unit" means any Rental Unit currently occupied by one or more Tenants.
- DD. "Tenant Organization" means Tenants who have organized themselves as a legal entity that:
1. Can acquire an interest in real property;
 2. Represents at least a majority of the Tenant-occupied Rental Units in a Rental Housing Accommodation as of the date of the Owner's notice of intent to sell pursuant to Section [Right of First Offer];
 3. Has adopted a Governing Document and Governing Principles; and
 4. Has appointed officers and any other authorized agents specifically designated to execute contracts act on its behalf.
- EE. "Third-party Purchaser" means any person or entity other than a Tenant, Tenant Organization, or Qualified Organization, engaged or seeking to engage, in purchasing a Rental Housing Accommodation from an Owner under this Chapter.

FF. "TOPA Buyer" means a Tenant, Tenant Organization, or Qualified Organization who is purchasing or has purchased a Rental Housing Accommodation from an Owner under this Chapter.

GG. "Under threat of eminent domain" refers to the commencement of the process of eminent domain, including but not limited to, any formal or informal contact with the owner by the government or government agents regarding the potential or ongoing assertion of eminent domain, and any hearings or court proceedings regarding the same.

13.89.030 "Sale" Defined.

A. "Sale" or "sell" includes, but is not limited to:

The transfer, in exchange for money or any other thing of economic value, of a present interest in the Rental Housing Accommodation, including beneficial use, where the value of the present interest is the fee interest in the Rental Housing Accommodation, or substantially equal to the value of that fee interest.

For purposes of this Section ["Sale" Defined], a transfer may include those completed in one transaction or a series of transactions over a period of time.

13.89.040 Authority.

The City Manager and their designees are authorized to enforce the provisions of this Chapter, and for such purposes, shall have the powers of a law enforcement officer. The City Manager is authorized to establish standards, policies, and procedures for the implementation of the provisions of this chapter to further the purpose set forth herein.

13.89.050 Applicability.

TOPA shall apply to all Rental Housing Accommodations unless exempted herein.

13.89.060 Exemptions.

A. Residential Property Types Exempted. The following properties are not Covered Properties for purposes of this Chapter:

1. Properties owned by the local, state, or federal government.
2. Properties owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.
3. A Single Family Home that an Owner occupies as their principal residence as defined in Administrative Regulations.

4. A Single Family Home with an ADU or other secondary dwelling unit, where an Owner occupies either the Single Family Home or the secondary unit as their principal residence as defined in Administrative Regulations.
5. Properties owned by cooperative corporations, owned, occupied, and controlled by a majority of residents.
6. Properties defined as “assisted housing developments” pursuant to California Government Code Section 65863.10(a)(3) so long as the provisions of California Government Code Section 65863.10, 65863.11, and 65863.13 apply.
7. Properties properly licensed as a hotel or motel.

B. Transfers Exempted

1. An inter-vivos transfer, even though for consideration, between spouses, domestic partners, parent and child, siblings, grandparent and grandchild.
2. A transfer for consideration, by a decedent’s estate to members of the decedent’s family if the consideration arising from the transfer will pass from the decedent’s estate to, or solely for the benefit of, charity.
 - a. For the purposes of (this subsection X), the term “members of the decedent’s family” includes:
 - i. A spouse, domestic partner, parent, child, grandparent, grandchild
 - ii. A trust for the primary benefit of a spouse, domestic partner, parent, child, grandparent, or grandchild
3. A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where the transferor is the current beneficiary of the trust.
4. A transfer to a named beneficiary of a revocable trust by reason of the death of the grantor of the revocable trust.
5. A transfer pursuant to court order or court-approved settlement.
6. A transfer by eminent domain or under threat of eminent domain.

C. Exemption Procedures and Burden of Proof.

1. Burden of Proof. The burden of proof to establish that a property type or planned transaction is exempt under this Chapter is on the Owner of the Rental Housing Accommodation.

2. The Owner of a Rental Housing Accommodation who believes that they should be granted an exemption under this Section [Exemptions] shall comply with procedures that the City shall create for claiming an exemption.

D. Voluntary Election to Participate. An Owner whose property or planned transaction is exempt from this Chapter pursuant to Sections [Applicability and Exemptions] may elect to subject their property to this Chapter by complying with procedures that the City shall create through Administrative Regulations, provided that the Owner who voluntarily subjects their property to this Chapter shall comply with this Chapter in its entirety. Each Tenant living in such property shall be granted all of the rights described in this Chapter, including the opportunity to decide whether to exercise their First Right of Purchase. No Owner shall be eligible for incentives described in Section [Incentives] without complying with this Chapter in its entirety.

13.89.70 First Right to Purchase.

This Chapter shall be construed to confer upon each Tenant a First Right to Purchase a Rental Housing Accommodation, subject to the exemptions in Section [Exemptions], in a manner consistent with this Chapter. The First Right to Purchase shall consist of both a Right of First Offer, as set forth in Section [Right of First Offer], and a Right of First Refusal, as set forth in Section [Right of First Refusal]. The First Right to Purchase is conferred to each Tenant but shall be exercised collectively pursuant to Section [Tenant Decision-Making]. The First Right to Purchase shall include the right to assign these rights to a Qualified Organization as set forth in Section [Assignment]. The First Right to Purchase shall be conferred where the Owner intends to sell the Rental Housing Accommodation. This Chapter shall not be construed to limit the right of first offer provided under Chapter 21.28.

13.89.080 Tenant Decision-Making; Tenant Organizations.

- A. **Tenant Decision-Making.** Except in the case of a duly formed Tenant Organization with its own adopted Governing Document, any action required of Tenants under this Chapter shall be approved by one of the following decision-making standards:
1. At least a Majority of Tenant-occupied units, in the case of a Rental Housing Accommodation with more than one Tenant-occupied unit.
 2. At least a Majority of Tenant Households, in the case of a Rental Housing Accommodation with only one Tenant-occupied unit but multiple Tenant Households.
 3. The Tenant Household, in the case of a Rental Housing Accommodation with only one Tenant Household.

B. Tenant Organizations.

1. In order to submit an offer of purchase pursuant to Section [Right of First Offer to Purchase] and respond to the Owner's Offer of Sale pursuant to Section [Right of First Refusal], Tenants shall:
 - a. Form a Tenant Organization, approved by the requirements described in subsection [Tenant Decision-Making], unless such a Tenant Organization already exists in a form desired by the Tenants.
 - i. Exception to Form Tenant Organization. If there is only one Tenant Household in a Rental Housing Accommodation, the Tenant Household may exercise the Right of First Offer and Right of First Refusal without forming a Tenant Organization pursuant to subsection [Formation Requirement]; however, the Tenant Household shall still comply with subsections [Supportive Partner] and [TO Registration].
 - b. Select a Supportive Partner, as defined in Section [Supportive Partner].
 - c. Deliver an application for registration of the Tenant Organization, or the Tenant Household, if applicable, to the City, and a copy to the Owner, by hand or by certified mail by the deadline of submitting an offer of purchase pursuant to Section [Right of First Offer]. The application shall include: the name, address, and phone number of Tenant officers and the Supportive Partner; a copy of the Formation Document, as filed; a copy of the Governing Document; documented approval that the Tenant Organization represents subsection [Tenant Decision-Making, A1 or A2) as of the time of registration; and such other information as the City may reasonably require. Tenants may form and register the Tenant Organization with the City pursuant to this subsection [Tenant Organizations], at any time; provided that this Section [Tenant Decision-Making; TO] shall not be construed to alter the time periods within which a Tenant Organization may exercise the rights afforded by this Chapter.
2. Upon registration with the City, the Tenant Organization shall constitute the sole representative of the Tenants.

13.89.090 Qualified Organizations

A. The City Manager shall establish an administrative process for certifying organizations that meet the following minimum criteria:

1. The organization is a bona fide nonprofit, as evidenced by the fact that it is exempt from federal income tax under 26 U.S.C. § 501(c)(3), or a California cooperative corporation, as evidenced by its articles of incorporation;
2. The organization has demonstrated a commitment to democratic residential control, as evidenced by its ownership and governance structure and relationship with residents;
3. The organization has agreed to transfer ownership of the Rental Housing Accommodation to the Tenants when feasible if Tenants so wish;
4. The organization has demonstrated a commitment to the provision of affordable housing for low, very low, and extremely low income City residents, and to prevent the displacement of such residents;
5. The organization has agreed to obligate itself and any successors in interest to maintain the permanent affordability of the Rental Housing Accommodation, in accordance with Section [Price Stabilization];
6. The organization has demonstrated a commitment to community engagement, as evidenced by relationships with neighborhood-based organizations or tenant counseling organizations;
7. The organization has demonstrated the capacity (including, but not limited to, the legal and financial capacity) to effectively acquire and manage residential real property at multiple locations within the Bay Area's nine counties;
8. The organization has acquired or partnered with another housing development organization to acquire at least one residential building using any public or community funding, or has acquired or partnered with another nonprofit organization to acquire any residential buildings; and
9. The organization has agreed to attend mandatory training to be determined, from time to time, by the City.

Notwithstanding any other requirement of this section, the Berkeley Housing Authority shall be deemed a Qualified Organization for purposes of this Chapter.

B. Certification, Term, and Renewal. Organizations that the City Manager certifies as having met the criteria in subsection [QO Criteria] shall be known as "Qualified Organizations." An organization's certification as a Qualified Organization shall be valid for four years. The City Manager shall solicit new applications for Qualified Organization status at least once each calendar year, at which time existing Qualified Organizations shall be eligible to apply for renewed certification as Qualified Organizations.

C. Existence and Publication of Qualified Organizations List. The City Manager shall publish on its website, and make available upon request, a list of Qualified Organizations. In addition to such other information as the City Manager may include, this list shall include contact information for each Qualified Organization. This contact information shall include, but need not be limited to, a mailing address, an e-mail address that the Qualified Organization monitors regularly, and a telephone number.

D. Disqualification of Qualified Organization and Conflicts of Interest. The City Manager shall promptly investigate any complaint alleging that a Qualified Organization has failed to comply with this Chapter. Subject to Administrative Regulations, if, after providing the Qualified Organization with notice and opportunity to be heard, the City Manager determines that an organization listed as a Qualified Organization has failed to comply with this Chapter, the City Manager may suspend or revoke that organization's certification as a Qualified Organization. The City Manager shall establish a process for addressing potential and actual conflicts of interests that may arise among Supportive Partners, Qualified Organizations, and Tenants through Administrative Regulations.

13.89.100 Supportive Partners

A. The City Manager shall establish an administrative process for certifying individuals or organizations that meet the following minimum criteria:

1. The individual or organization has demonstrated ability and capacity to guide and support Tenants in forming a Tenant Organization;
2. The individual or organization has demonstrated ability and capacity to assist Tenants in understanding and exercising their rights under this Chapter;
3. The individual or organization has demonstrated expertise, or existing partnerships with other organizations with demonstrated expertise, to counsel Tenants on first-time homeownership and collective ownership structures;
4. The individual or organization has a demonstrated commitment to creating democratic resident-controlled housing; and
5. The individual or organization has agreed to attend mandatory trainings, to be determined, from time to time, by the City.

B. Certification, Term, and Renewal. Individuals and organizations that the City Manager certifies as having met the criteria in subsection [SP Criteria] shall be known as "Supportive Partners." An individual or organization's certification as a Supportive Partner shall be valid for four years. The City Manager shall solicit new applications for Supportive Partner status at least once each calendar year, at which time existing

Supportive Partners shall be eligible to apply for renewed certification as Supportive Partners.

C. Purpose of Supportive Partner. A Supportive Partner functions in a supportive role to assist Tenants in exercising their rights under this Chapter. This Chapter does not confer any rights to a Supportive Partner. A Supportive Partner is distinct from a Qualified Organization who is conferred subordinated rights under this Chapter as described in Section 13.89.070. The City Manager may determine that a Qualified Organization described in Section 13.89.090 who meets the criteria in subsection 13.89.100A is also eligible to serve as a Supportive Partner. The City may also serve as a Supportive Partner.

D. Existence and Publication of Supportive Partners List. The City Manager shall publish on its website, and make available upon request, a list of Supportive Partners. In addition to such other information as the City Manager may include, this list shall include contact information for each Supportive Partner. This contact information shall include, but need not be limited to, a mailing address, an e-mail address that the Supportive Partner monitors regularly, and a telephone number.

E. Disqualification of Supportive Partner and Conflicts of Interest. The City Manager shall promptly investigate any complaint alleging that a Supportive Partner has failed to comply with this Chapter. Subject to Administrative Regulations, if, after providing the Supportive Partner with notice and opportunity to be heard, the City Manager determines that an individual or organization listed as a Supportive Partner has failed to comply with this Chapter, the City Manager may suspend or revoke that individual or organization's certification as a Supportive Partner. The City Manager shall establish a process for addressing potential and actual conflicts of interests that may arise among Supportive Partners, Qualified Organizations, and Tenants through Administrative Regulations.

13.89.110 Assignment of Rights

- A. A Tenant or Tenant Organization may assign rights under this Chapter in compliance with subsection [Tenant Decision-Making] to a Qualified Organization of their choice.
- B. Subject to Administrative Regulations, the assignment of rights described in this Section shall occur prior to the Tenant or Tenant Organization waiving their rights pursuant to Section [Waiver of Rights]], and only during the process provided in Section [Statement of Interest] and Section [Right of First Offer]. Except as provided in section 13.89.120, the waiver and assignment of rights shall made in a written agreement executed by the Tenant or Tenant Organization and the Qualified Organization.
- C. Qualified Organizations shall not accept any payment, consideration, or reward in exchange for the assignment of rights under this Section.

13.89.120 Waiver of Rights

- A. Tenants may affirmatively waive their rights before the time periods specified in Sections [Right of First Offer] and [Right of First Refusal] elapse by notifying the Owner in writing, signed by the Tenants and in compliance with Section [Tenant Decision-Making; Tenant Organizations].
- B. Tenants' failure to complete actions required under Sections [Right of First Offer] and [Right of First Refusal] within the allotted time periods and any extensions thereof shall be deemed a waiver of Tenants' rights.

13.89.130 Notice Requirements

Any notices required or permitted by this Chapter shall also comply with Administrative Regulations.

13.89.140 Right of First Offer

- A. **General Construction.** Before an Owner of a Rental Housing Accommodation may offer it for sale to, solicit any offer to purchase from, or accept any unsolicited offer to purchase from, any Third Party Purchaser, the Owner shall give the Tenant of the Rental Housing Accommodation the first opportunity to make an offer as set forth in this Section.
- B. **Joint Notification.** In accordance with Section [Notice Requirements]], the Owner shall:
 - a) Notify each Tenant of the Owner's intent to Sell the Rental Housing Accommodation by certified mail and by posting a copy of the notice in a conspicuous place in common areas of the Rental Housing Accommodation.
 - i) The notice shall include, at a minimum:
 - (1) A statement that the Owner intends to sell the Rental Housing Accommodation.
 - (2) A statement of the rights of Tenants and Qualified Organizations and the accompanying timelines described in this Chapter.
 - (3) A statement of the rights of Tenants and Qualified Organizations and the accompanying timelines described in this Chapter.
 - (4) A statement that the Owner shall make the related disclosures described in this Chapter available to the Tenant.
 - (5) A statement in English, Chinese, and Spanish stating that if the Tenant requires the notice in a language other than English, they can contact the City and request the notice in their language and/or the assistance of an interpreter.
 - b) Notify each Qualified Organization, at the same time as notifying Tenants, of the Owner's intent to Sell the Rental Housing Accommodation, by sending an e-mail to each of the e-mail addresses included on the City's list

of Qualified Organizations described in Section [Qualified Organizations, subsection B “Existence and Publication of Qualified Organizations List”].

- c) File a copy of the notices with proof that they have been sent to the Tenants and Qualified Organizations with the City or its designated agency, at the same time notice is sent to Tenants and Qualified Organizations.

C. Related Disclosures. When the Owner, pursuant to [this Section], notifies each Tenant and Qualified Organization of its intent to sell a Rental Housing Accommodation, the Owner shall also provide each Tenant and Qualified Organization with the following information, at minimum:

1. A floor plan of the property;
2. An itemized list of monthly operating expenses, utility consumption rates, and capital expenditures for each of the two preceding calendar years;
3. A list of any known defects and hazards, and any related costs for repair;
4. The most recent rent roll: a list of occupied units and list of vacant units, including the rate of rent for each unit and any escalations and lease expirations.
5. Covenants, Conditions, & Restrictions and reserves, in the case of a condominium dwelling;
6. Any other disclosures required by California state law.

D. Time to Submit a Statement of Interest.

1. Upon receipt of the notice and disclosures described in subsections [Joint Notification and Related Disclosures], Tenants shall deliver one statement of interest to the Owner on behalf of the Rental Housing Accommodation.
2. Tenants shall have 20 days in a Rental Housing Accommodation comprised of 1 or 2 units, and 30 days in a Rental Housing Accommodation with 3 or more units, to deliver the statement of interest. Tenants in a Rental Housing Accommodation with 30 or more units shall be granted one extension of up to 15 days upon request, for a total of 45 days. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to deliver a statement of interest to the Owner.
 - a) The statement of interest shall be a clear expression from the Tenants that they intend to further consider making an offer to purchase the Rental Housing Accommodation or further consider assigning their rights to a Qualified Organization.
 - b) The statement of interest shall also include documentation demonstrating that the Tenants’ decision was supported by the standard described in Section [Tenant Decision-Making].
 - c) If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via e-mail, on the same day that Tenants waive their rights, of the right of each Qualified Organization to submit a statement of interest to the Owner.

- d) Upon receipt of this notice, a Qualified Organization that intends to further consider making an offer to purchase the Rental Housing Accommodation shall deliver a statement of interest to the Owner and every other Qualified Organization via e-mail within the time periods in subsection [description of remaining time for QOs in this subsection above].
- e) The statement of interest shall be a clear expression that the Qualified Organization intends to further consider making an offer to purchase the Rental Housing Accommodation.
- f) If a Qualified Organization has delivered a statement of interest consistent with subsection [above], the Owner shall, subject to seeking Tenant approval for disclosure of any confidential or personal information, disclose to each such Qualified Organization, via e-mail, the names of Tenants in each occupied unit of the Rental Housing Accommodation, as well as any available contact information for each Tenant.
- g) If Tenants and Qualified Organizations do not deliver a statement of interest within the time periods specified in [this subsection], the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and solicit offers of purchase from, prospective Third Party Purchasers, subject to the Right of First Refusal in Section [Right of First Refusal].

E. Time to Submit Offer.

1. **Rental Housing Accommodation with only one Tenant Household.** The following procedures apply to offers to purchase a Rental Housing Accommodation with only one Tenant Household.
 - a. Upon receipt of a statement of interest from Tenants consistent with Section [Time to Submit a Statement of Interest], an Owner shall afford the Tenants an additional 21 days to select a Supportive Partner and submit an offer to purchase the Rental Housing Accommodation. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to submit an offer to the Owner.
 - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via email, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall submit an offer to the Owner within the time period specified in subsection [description of remaining time for QOs in this subsection above].
2. **2-unit property and Single Family Home with multiple Tenant Households.** The following procedures apply to offers to purchase a Rental Housing Accommodation with 2 units or a Single Family Home with multiple Tenant Households, unless subject to subsection [Rental Housing Accommodations with one Tenant Household].

- a. Upon receipt of a statement of interest from Tenants consistent with Section [Time to Submit Statement of Interest], an Owner shall afford the Tenants an additional 45 days to form a Tenant Organization, select a Supportive Partner, and deliver an offer to purchase the Rental Housing Accommodation. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to deliver an offer to the Owner.
 - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via e-mail, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall deliver an offer within the time period specified in subsection [description of remaining time for QOs in this subsection above].
3. **3 or more unit properties.** The following procedures apply to offers to purchase a Rental Housing Accommodation with 3 or more units, unless subject to subsection [Rental Housing Accommodation with one Tenant Household].
 - a. Upon receipt of a Statement of Interest from Tenants consistent with Section [Time to Submit Statement of Interest], an Owner shall afford Tenants an additional 60 days to form a Tenant Organization, select a Supportive Partner, and deliver an offer to purchase the Rental Housing Accommodation. Tenants in a Rental Housing Accommodation with 10-29 units shall be granted one extension of up to 30 days upon request, for a total of 90 days to submit an offer to the Owner. Tenants in a Rental Housing Accommodation with 30 or more units shall be granted two extensions of up to 30 days each, for a total of 120 days to deliver an offer to the Owner. If the Tenants waive their rights in accordance with Section [Waiver of Rights] Qualified Organizations shall have the remaining time within these time periods and any extensions thereof, or a minimum of 5 days, whichever is greater, to deliver an offer to the Owner.
 - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via email, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall deliver an offer within the time period specified in subsection [description of remaining time for QOs in this subsection above].
4. **Price Stabilization Agreement.** Within these timeframes for submitting an offer, the Tenant, Tenant Organization, or Qualified Organization that submits an offer to the Owner shall also submit an agreement to the City pursuant to Section [Price Stabilization subsection B] agreeing to be bound by requirements of Section [Price Stabilization].

F. **Owner Free to Accept or Reject Offer.** The Owner is free to accept or reject any offer of purchase from a Tenant, Tenant Organization or Qualified Organization. Any such acceptance or rejection shall be communicated in writing.

1. **Incentives to Accept Offer.** If the Owner accepts any such offer of purchase from a Tenant, Tenant Organization or a Qualified Organization, the Owner may be eligible to receive incentives pursuant to Section [Incentives].
2. **Rejection of Offer.** If the Owner rejects all such offers of purchase, the Owner may immediately offer the Rental Housing Accommodation for sale to, and solicit offers of purchase from, prospective Third Party Purchasers, subject to the Right of First Refusal described in Section [Right of First Refusal].
3. **Lapse of Time.** If 90 days elapse from the date of an Owner's rejection of an offer from a Tenant, Tenant Organization or a Qualified Organization, and the Owner has not provided an offer of sale as described in Section [Right of First Refusal], the Owner shall comply anew with this Section [Right of First Offer].

G. **Time to Secure Financing.**

1. **Single Family Home with a one Tenant Household.** The following procedures apply to a purchase of a Single Family Home with only one Tenant Household.
 - a. The Owner shall afford the Tenant or Qualified Organization 30 days after the date of the entering into contract to secure financing.
 - b. If, within 30 days after the date of contracting, the Tenant or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 45 days after the date of contracting, the Owner shall afford the Tenant or Qualified Organization an extension of time consistent with the written estimate.
 - c. If the Tenant or Qualified Organization do not secure financing and close the transaction within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third Party Purchasers other than the Tenant or Qualified Organization.
2. **2-unit property and Single Family Home with multiple Tenant Households.** The following procedures apply to a purchase of a Rental Housing Accommodation with 2 units or a Single Family Home with multiple Tenant Households.

- a. The Owner shall afford the Tenant Organization or Qualified Organization 90 days after the date of entering into contract to secure financing.
 - b. If, within 90 days after the date of contracting, the Tenant Organization or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 120 days after the date of contracting, the Owner shall afford the Tenant Organization or Qualified Organization an extension of time consistent with the written estimate.
 - c. If the Tenant Organization or Qualified Organization do not secure financing and close the transaction within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third-Party Purchasers other than the Tenant Organization or Qualified Organization.
3. **3 or more unit properties.** The following procedures apply to purchases of Rental Housing Accommodations with 3 or more units.
- a. The Owner shall afford the Tenant Organization or Qualified Organization 120 days after the date of entering into contract to secure financing.
 - b. If, within 120 days after the date of contracting, the Tenant Organization or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 160 days after the date of contracting, the Owner shall afford the Tenant Organization or Qualified Organization an extension of time consistent with the written estimate.
 - c. If the Tenant Organization or Qualified Organization do not secure financing and close the deal within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third-Party Purchasers other than the Tenant Organization or Qualified Organization.
- H. **Time to Close.** In addition to the time periods in subsection [Time to Secure Financing], the Owner shall afford each Tenant, Tenant Organization, or Qualified Organization with an additional 14 days to close. So long as the Tenant, Tenant

Organization, or Qualified Organization is diligently pursuing the close, the Owner shall afford them a reasonable extension beyond this 14-day period to close.

13.89.150 Right of First Refusal

A. General Construction. This Section [Right of First Refusal] shall be construed to confer a Right of First Refusal only upon each Tenant, Tenant Organization, and Qualified Organization that exercised the Right of First Offer pursuant to Section [Right of First Offer].

B. Offer of sale to Tenant, Tenant Organizations, and Qualified Organizations. Before an Owner of a Rental Housing Accommodation may sell a Rental Housing Accommodation, the Owner shall give each Tenant, Tenant Organization, or Qualified Organization that previously made an offer to purchase that Rental Housing Accommodation pursuant to Section [Right of First Offer], an opportunity to purchase the Rental Housing Accommodation at a price and terms that represent a Bona Fide Offer of Sale.

1. The Owner's offer of sale shall include, at minimum:
 - a. The asking price and terms of the sale. The terms and conditions shall be consistent with the applicable timeframes described in Sections [Time to Accept Offer, Time to Secure Financing, and Time to Close];
 - b. A statement as to whether a contract with a Third-party Purchaser exists for the sale of the Rental Housing Accommodation, and if so, a copy of such contract; and
 - c. A statement in English, Chinese, and Spanish stating that if the Tenant requires the offer of sale in a language other than English, they may contact the City and request the offer of sale in their language and/or the assistance of an interpreter.
2. If a Tenant or Tenant Organization is receiving the offer of sale, the Owner shall deliver the items in subsection [Offer of sale, subsection a] to each Tenant or Tenant Organization by providing a written copy of the offer of sale by certified mail.
3. If a Qualified Organization is receiving the offer of sale, the Owner shall deliver the items in subsection [Offer of sale, subsection a] to each Qualified Organization that previously made an offer to purchase the Rental Housing Accommodation. The Owner shall submit an offer of sale to each such Qualified Organization on the same day, and to the extent possible, at the same time, by e-mail.
4. If the Owner has a contract with a Third-Party Purchaser for the sale of the Rental Housing Accommodation, the Owner shall deliver all of the items in

subsection [Offer of sale, part a] to each Tenant, Tenant Organization or Qualified Organization within 2 days of entering into contract with the Third-Party Purchaser.

5. The Owner shall also provide the City with a written copy of the offer of sale and a statement certifying that the items in subsection [Offer of sale, subsection a] were delivered to each Tenant, Tenant Organization, or Qualified Organization.

C. Bona Fide Offer of Sale.

1. For purposes of this section, a “Bona Fide Offer of Sale” means an offer of sale for a Rental Housing Accommodation that is either:
 - a. For a price and other material terms at least as favorable to a Tenant, Tenant Organization or Qualified Organization as those that the Owner has offered, accepted, or is considering offering or accepting, from a Third Party Purchaser in an arm’s length third-party contract; or
 - b. In the absence of an arm’s length third-party contract, an offer of sale containing a sales price less than or equal to a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the Rental Housing Accommodation, or an appraised value.

D. Time to Accept Offer.

1. **Rental Housing Accommodation with one Tenant Household.** The following procedures apply to a Rental Housing Accommodation with only one Tenant Household.
 - a. Upon receipt of the offer of sale from the Owner, a Tenant or Qualified Organization shall have 10 days to accept the offer of sale, provided, however, that the deadline to accept any offer of sale shall be extended to allow the Tenant or Qualified Organization to exercise their Right to an Appraisal pursuant to Section [Right to an Appraisal], if they believe that the offer of sale is not a Bona Fide Offer of Sale.
2. **Rental Housing Accommodation with multiple Tenant Households.** The following procedures apply to a Rental Housing Accommodation with multiple Tenant Households.
 - a. Upon receipt of the offer of sale from the Owner, a Tenant Organization shall have 30 days to accept the offer of sale.
 - b. Upon receipt of the offer of sale from the Owner, a Qualified Organization shall have 14 days to accept the offer of sale.
 - c. The deadline to accept any offer of sale shall be extended to allow the Tenant or Qualified Organization to exercise their Right to an

Appraisal pursuant to Section [Right to an Appraisal], if they believe that the offer of sale is not a Bona Fide Offer of Sale.

3. If, during these time periods, any Qualified Organization that has received such offer of sale decides to accept the Owner's offer of sale, that Qualified Organization shall notify the Owner and every other Qualified Organization of that decision by e-mail. After a Qualified Organization notifies the Owner of its decision to accept the Owner's offer of sale (that is, before any other Qualified Organization so noticed the Owner), that Qualified Organization shall be deemed to have accepted the offer of sale, and no other Qualified Organization may accept the Owner's offer of sale, whether or not the time periods in this subsection have elapsed.

E. Time to Secure Financing and Close. If a Tenant, Tenant Organization, or Qualified Organization accept an Owner's offer of sale in accordance with this Section [Right of First Refusal], the Owner shall afford such Tenant, Tenant Organization, or Qualified Organization time to secure financing and close, consistent with Sections [Time to Secure Financing and Time to Close].

F. Rejection of Offer. If each Tenant, Tenant Organization, and Qualified Organization that received an offer of sale consistent with this Section [Right of First Refusal] rejects that offer of sale or fails to respond within the timelines described in this Section, the Owner may immediately proceed with the sale of the Rental Housing Accommodation to a Third-Party Purchaser consistent with the price and material terms of that offer of sale.

13.89.160 Third-Party Rights

The right of a third party to purchase a Rental Housing Accommodation is conditional upon the exercise of Tenant, Tenant Organization, and Qualified Organization rights under this Chapter. The time periods for submitting and accepting an offer, securing financing, and closing under this Chapter are minimum periods, and the Owner may afford any Tenant, Tenant Organization, and Qualified Organization a reasonable extension of such period, without liability under a third party contract. Third Party Purchasers are presumed to act with full knowledge of the rights of Tenants, Tenant Organizations, and Qualified Organizations and public policy under this Chapter.

13.89.170 Right to Appraisal

- A. This Section shall apply whenever an offer of sale is made to a Tenant, Tenant Organization, or Qualified Organizations as required by this Chapter and the offer is made in the absence of an arm's-length third-party contract.
- B. **Request for Appraisal.** The Tenant, Tenant Organization, or Qualified Organization that receives an Owner's offer of sale may challenge that offer of sale as not being a Bona Fide Offer of Sale, and request an appraisal to determine the fair market value of the Rental Housing Accommodation. The party

requesting the appraisal shall be deemed the “petitioner” for purposes of this subsection. The petitioner shall deliver the written request for an appraisal to the City and the Owner by hand or by certified mail within 3 days of receiving the offer of sale.

- C. **Time for Appraisal.** Beginning with the date of receipt of a written request for an appraisal, and for each day thereafter until the petitioner receives the appraisal, the time periods described in Section [Time to Accept Offer] shall be extended by an additional day up to ten (10) business days.
- D. **Selection of Appraiser.** The petitioner shall select an appraiser from a list of independent, qualified appraisers, that the City shall maintain. City approved appraisers shall hold an active appraiser license issued by the California Bureau of Real Estate Appraiser and shall be able to conduct an objective, independent property valuation, performed according to professional industry standards. All appraisers shall undergo training organized by the City before they are approved and added to the City’s list.
- E. **Cost of Appraisal.** The petitioner, Owner, and the City, shall each be responsible for one-third of the total cost of the appraisal.
- F. **Appraisal Procedures and Standards.** The Owner shall give the appraiser full, unfettered access to the property. The Owner shall respond within 3 days to any request for information from the appraiser. The petitioner may give the appraiser information relevant to the valuation of the property. The appraisal shall be completed expeditiously according to standard industry timeframes. An appraised value shall only be based on rights an owner has as a matter-of-right as of the date of the alleged Bona Fide Offer of Sale, including any existing right an Owner may have to convert the property to another use. Within these restrictions, an appraised value may take into consideration the highest and best use of the property.
- G. **Validity of Appraisal.** The determination of the appraised value of the Rental Housing Accommodation, in accordance with this Section, shall become the sales price of the Rental Housing Accommodation in the Bona Fide Offer of Sale, unless:
 - a. The Owner and the petitioner agree upon a different sales price of the Rental Housing Accommodation; or
 - b. The Owner elects to withdraw the offer of sale altogether within 14 days of receipt of the appraisal.
 - i. The Owner shall withdraw the Offer of Sale by delivering a written notice by hand or by certified mail to the City and to the petitioner.
 - ii. Upon withdrawal, the Owner shall reimburse the petitioner and the City for their share of the cost of the appraisal within 14 days of delivery of written notice of withdrawal.
 - iii. An Owner who withdraws an offer of sale in accordance with this subsection shall be precluded from proceeding to sell the Rental Housing Accommodation to a Third-Party Purchaser without

complying with this Chapter anew and honoring the First Right of Purchase of Tenants and Qualified Organizations.

- c. The petitioner elects to withdraw the offer of sale altogether within 14 days of receipt of the appraisal.
 - i. The petitioner shall withdraw the Offer of Sale by delivering a written notice by hand or by certified mail to the City and to the Owner.
 - ii. Upon withdrawal, the petitioner shall reimburse the Owner and the City for their share of the cost of the appraisal within 14 days of delivery of written notice of withdrawal.

13.89.180 Contract Negotiation

A. Bargaining in good faith. The Owner and any Tenant, Tenant Organization, and/or Qualified Organization shall bargain in good faith regarding the terms of any Offer for Sale. Any one of the following constitutes prima facie evidence of bargaining without good faith:

- 1. The failure of an Owner to offer a Tenant, Tenant Organization, or Qualified Organization a price and other material terms at least as favorable as that offered to a Third Party Purchaser.
- 2. Any requirement by an Owner that a Tenant, Tenant Organization, or Qualified Organization waive any right under this Chapter.
- 3. The intentional failure of an Owner, Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter.

B. Reduced price. If the Owner sells or contracts to sell the Rental Housing Accommodation to a Third-Party Purchaser for a price less than the price offered to the Tenant, Tenant Organization, or Qualified Organization in the offer of sale, or for other terms, which would constitute bargaining without good faith, the Owner shall comply anew with all requirements of this Chapter, as applicable.

C. Termination of rights. The intentional failure of any Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter shall result in the termination of their rights under this Chapter.

13.89.190 No Selling of Rights

- A. A Tenant, Tenant Organization, or Qualified Organization shall not sell any rights under this Chapter.
- B. An Owner shall not coerce a Tenant or Tenant Organization to waive their rights under this Chapter.

13.89.200 Tenant Protections

- A. No Tenant in the Rental Housing Accommodation, including those Tenants who do not exercise rights to purchase under this Chapter, may be evicted by the TOPA Buyer, except for good cause in compliance with the City's Rent Stabilization and Eviction for Good Cause Ordinance and applicable state law.
- B. Should the maximum allowable rent provision of the City's Rent Stabilization and Eviction for Good Cause Ordinance not apply, TOPA Buyers shall adjust the rent annually to allow an increase of no more than the increase in the CPI plus a reasonable, pro rata share of capital improvements for common areas or agreed to capital improvements for the unit in accordance with Administrative Regulations and subject to Section [Price Stabilization re: rent restrictions]. These rent increase limits shall only apply to units that can be controlled in compliance with Costa-Hawkins Rental Housing Act.
- C. TOPA Buyers shall not refuse to provide Rental Housing Accommodations to any person based on the source of funds used to pay for the Rental Housing Accommodations, including but not limited to any funds provided by Berkeley Housing Authority Section 8 vouchers or any other subsidy program established by the Federal, State or County and the City of Berkeley, the City's Shelter Plus Care Program certificates or any future rent subsidy from the City or other governmental entity made available to extremely low to moderate low income households for vacant units in the purchased Rental Housing Accommodation, and shall comply with sections 13.31.010 and 13.31.020.

13.89.210 Price Stabilization

- A. Rental Housing Accommodation purchased by a TOPA Buyer under this Chapter shall be subject to permanent affordability restrictions as set forth in this Section and Administrative Regulations created with the intent of fulfilling the purpose of this Chapter.
- B. "Permanent affordability" means that future rents and future sales prices of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, shall be made affordable to households with targeted income levels.
- C. Term. Subject to Administrative Regulations, permanent affordability standards shall restrict the use of the Rental Housing Accommodation to require that permanent affordability restrictions remain in force for 99 years and with an option to renew at year 100. This subsection is not to be construed to apply only to community land trusts.
- D. In exchange for the rights conferred under this Chapter, each TOPA Buyer agrees to maintain the permanent affordability of the Rental Housing Accommodation. No TOPA Buyer shall be entitled to contract under this Chapter without executing an agreement with the City to limit the future appreciation of the Rental Housing Accommodation and

only sell, or rent, to income-eligible households in accordance with this Section [Price Stabilization] and relevant standards and exemptions created by the City through Administrative Regulations. Under this agreement, each TOPA Buyer shall represent to the City that they agree to be bound by the permanent affordability requirements under this Section.. The TOPA Buyer shall deliver this agreement to the City no later than the deadline for submitting an offer provided under Section [Right of First Offer].

E. For a Tenant or Tenant Organization purchasing a Rental Housing Accommodation, permanent affordability standards created by the City shall:

1. Restrict the resale price of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, by limiting the annual market appreciation of the Rental Housing Accommodation, or separate ownership interest, to an increase of no more than 25 percent of the appreciated value as determined by the difference between an appraisal made at the time of purchase and the appraisal made at the time of sale. The City may create standards to limit the annual market appreciation at less than 25 percent through Administrative Regulation;
2. Ensure that a unit in which a Tenant determines to remain a renter following a purchase under this Chapter shall be maintained as a unit subject to the requirements of Section [Tenant Protections - rent control mandate], unless the City determines a valid exemption or alternative standard should apply for such unit assisted by the City or other public subsidy program which is subject to separate permanent affordability requirements; and
3. At minimum, make the restricted resale price of the Rental Housing Accommodation, or ownership interests in the Rental Housing Accommodation, available only to households with income at or below the average AMIs of the initial TOPA Buyers as of the initial purchase date of the Rental Housing Accommodation, as verified and recorded by the City as of the initial purchase date.

F. For Qualified Organizations purchasing the Rental Housing Accommodation, permanent affordability standards created by the City shall:

1. Restrict the resale price of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, by limiting the annual market appreciation of the Rental Housing Accommodation, or separate ownership interest, to an increase of no more than the percentage change in the regional CPI or AMI plus credits for capital improvements, at a minimum, but in no event more than 25 percent of the appreciated value as determined by the difference between an appraisal made at the time of purchase and the appraisal made at the time of sale;

2. Ensure that a unit in which a Tenant determines to remain a renter following a purchase under this Chapter shall be maintained as a unit subject to the requirements of Section [Tenant Protections - rent control mandate], unless the City determines a valid exemption or alternative standard should apply for such unit assisted by the City or other public subsidy program which is subject to separate permanent affordability requirement; and
3. Prioritize making vacant or vacated units in the Rental Housing Accommodation available to Households with income at or below 30 percent, 50 percent, and 80 percent of AMI.

G. Mechanism. Permanent affordability restrictions shall materialize as at least one of the following:

1. A restrictive covenant placed on the recorded title deed to the Rental Housing Accommodation that runs with the land and is enforceable by the City against the TOPA Buyer and its successors, and one of the following:
 - a. Other affordability restrictions in land leases or other recorded documents not specifically listed in this subsection, so long as the City determines that such restrictions are enforceable and likely to be enforced such as a recorded mortgage promissory note and/or regulatory agreements with the City where City subsidies are involved.
2. A community land trust lease, which is a 99-year renewable land lease with affordability and owner-occupancy restrictions.
3. A Limited Equity Housing Cooperative.

H. Required Recordings and Filings.

1. All covenants created in accordance with this Section [Price Stabilization] shall be recorded before or simultaneously with the close of escrow in the office of the county recorder where the Rental Housing Accommodation is located and shall contain a legal description of the Rental Housing Accommodation, indexed to the name of the TOPA Buyer as grantee.
2. Each TOPA Buyer of the Rental Housing Accommodation will be required to file a document annually with the City in which the TOPA Buyer affirmatively states the rents and share price for each unit in the Rental Housing Accommodation. The City may engage a third party monitoring agent to monitor the compliance of this subsection [annual certification], pursuant to Administrative Regulations.

I. Exemption from the City's Affordable Housing Mitigation Fee.

Qualified Organizations and Tenant Organizations shall not be subject to the payment of the City's affordable housing mitigation fee pursuant to the

Condominium Conversion Ordinance, Chapter 21.28, if converting units in the Rental Housing Accommodation to limited equity condominiums for the purpose of providing permanently affordable housing opportunities subject to and in compliance with the requirements of this Section [Price Stabilization] and Administrative Regulations.

13.89.220 Incentives

- A. Access to Buyers.** The City shall endeavor to maintain and publicize the list of Qualified Organizations described in Section XXX in a manner that, to the maximum extent feasible, promotes the existence of the Qualified Organizations as a readily accessible pool of potential buyers for Covered Properties. The City shall, to the maximum extent permitted by law and otherwise feasible, publicize the existence of this list in a manner intended to facilitate voluntary sales to Qualified Organizations in a manner that avoids or minimizes the need for a broker, other search costs, or other transactions.
- B. Partial City Transfer-Tax Exemption.** As set forth in Section XXX of the XXXX Municipal Code, the increased tax rate imposed by subsections XXX Section XXX shall not apply with respect to any deed, instrument or writing that affects a transfer under Section XXX of this Chapter, as Section XXX exists as of the effective date of the Ordinance.
- C. Potential Federal Tax Benefits.** Any Qualified Organization that purchases a Rental Housing Accommodation under the right of first offer set forth in Section XXX shall, to the maximum extent permitted by law and otherwise feasible, be obliged to work with the Owner in good faith to facilitate an exchange of real property of the kind described in 26 U.S.C. § 1031, for the purpose of facilitating the Owner's realization of any federal tax benefits available under that section of the Internal Revenue Code.
- D. Information to Owners.** The City shall produce an information sheet describing the benefits of an Owner's decision to accept a Tenants' or Qualified Organization's offer of purchase made in connection with the first right to purchase forth in Sections [Right of First Offer] and [Right of First Refusal]. The information sheet shall further explain that, even if a Owner does not accept a Tenants' or Qualified Organizations' offer to purchase a Rental Housing Accommodation pursuant to the right of first offer set forth in Section [Right of First Offer], the Rental Housing Accommodation will still be subject to the right of first refusal set forth in Section [Right of First Refusal]. The information sheet shall contain a field in which the Owner may acknowledge, in writing, that the Owner (or the Owner's authorized representative) has read and understood the information sheet. A Tenant, Tenant Organization, or Qualified Organization that makes an offer to purchase a Rental Housing Accommodation under the right of first offer set forth in Section XXX shall include a copy of, or link to, this information sheet with that offer of Purchase, but any failure to comply with this

Section XXX shall have no effect on a Qualified Organization's exercise of the right of first offer set forth in Section XXX.

13.89.230 Enforcement

A. Powers and Duties of the City.

1. The City is authorized to take all appropriate action, including but not limited to the actions specified in Section [Authority], to implement and enforce this Chapter.

B. Implementation

1. The City Manager shall promulgate rules and regulations consistent with this Chapter.
2. The City shall adopt regulations to implement a petition and hearing procedure for administering the enforcement of this Chapter.
3. The City shall establish and make available standard documents to assist Owners, Tenants, Tenant Organizations, and Qualified Organizations in complying with the requirements of this Chapter through an online portal, provided that use of such documents does not necessarily establish compliance.
4. **Owner Certification and Disclosures.** Every Owner of a residential property in the City shall, within 15 days of the sale of the residential property, submit to the City a signed declaration, under penalty of perjury, affirming that the sale of that residential property complied with the requirements of this Chapter. Such declaration shall include the address of the relevant residential property and the name of each new Owner of the Rental Housing Accommodation. The City shall publish all such addresses on its website. Failure to file a declaration required by this subsection [Owner Certification] shall result in the penalty described in subsection [Civil Penalties].

C. Enforcement

1. **Civil Action.** Any party may seek enforcement of any right or provision under this Chapter through a civil action filed with a court of competent jurisdiction and, upon prevailing, shall be entitled to remedies, including those described in Section [Penalties and Remedies].
2. **Penalties and Remedies.**
 - a. **Civil Penalties.** An Owner who willfully or knowingly violates any provision of this Chapter shall be subject to a cumulative civil penalty imposed by the

City in the amount of up to [\$1,000] per day, per Tenant-occupied unit in a Rental Housing Accommodation, for each day from the date the violation began until the requirements of this Chapter are satisfied, payable to [the Housing Trust Fund established by the City].

- b. **Legal Remedies.** Remedies in civil action brought under this Section [Enforcement] shall include the following, which may be imposed cumulatively:
 - i. Damages in an amount sufficient to remedy the harm to the plaintiff;
 - ii. In the event that an Owner sells a Rental Housing Accommodation without complying with the requirements of this Chapter, and if the Owner's violation of this Chapter was knowing or willful, mandatory civil penalties in an amount proportional to the culpability of the Owner and the value of the Rental Housing Accommodation. There shall be a rebuttable presumption that this amount is equal to 10 percent of the sale price of the Rental Housing Accommodation for a willful or knowing violation of this Chapter, 20 percent of the sale price for a second willful or knowing violation, and 30 percent of the sale price for each subsequent willful or knowing violation. Civil penalties assessed under this subsection [Owner's knowing and willful violation] shall be payable to the Housing Trust Fund established by the City; and
 - iii. Reasonable attorneys' fees.
- b. **Equitable Remedies.** In addition to any other remedy or enforcement measure that a Tenant, Tenant Organization, Qualified Organization, or the City may seek under subsection [Legal Remedies], any court of competent jurisdiction may enjoin any Sale or other action of an Owner that would be made in violation of this Chapter.

13.89.240 Statutory Construction.

The purpose of this Chapter is to prevent the displacement of lower-income Tenants from the City and to preserve affordable housing by providing an opportunity for Tenants to own or remain renters in the properties in which Tenants reside as provided in this Chapter. If a court finds ambiguity and there is any reasonable interpretation of this Chapter that favors the rights of the Tenant then the court should resolve ambiguity toward the end of strengthening the legal rights of the Tenant or Tenant Organization to the maximum extent permissible under law.

13.89.250 Administration and Reports

- A. The City Manager shall report annually on the status of the Tenant Opportunity to Purchase Act Program to the City Council or to such City Council Committee as the City Council may designate. Such reports shall include, but shall not be limited to the following:
 - 1. Statistics on the number and types of sales of tenant occupied properties
 - 2. Statistics on the number of Tenants and Qualified Organizations that invoke action under this chapter.
 - 3. Number and types of units covered by this Chapter.
 - 4. Any other information the City Council or Committee may request.

- B. The City shall make available translation services in languages other than English, where requested in advance by a Tenant, Tenant Organization, Qualified Organization, Owner, or member of the public as it relates to TOPA, to interpret and translate documents and procedures as needed.

13.89.260 Severability

If any word, phrase, clause, sentence, subsection, section, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason by a decision of a court of competent jurisdiction, then such word, phrase, clause, sentence, subsection, section, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words had been declared invalid or unconstitutional.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

BERKELEY				
Address	Details	Market Time	Asking Price	Sale Price
1500 Ward St, Berkeley, CA 94703	8 bd, 4 ba	472 days	\$1,354,000 (-9.1%)	
1616 Prince st	5 units	111 Days	\$1,500,000	
1257 Francisco St, Berkeley, CA 94702	6 units	118 days	\$3,325,000 (-5%)	
2326 Mckinley Ave, Berkeley, CA 94703	4 units	226 days	\$2,650,000 (-8.6%)	
1901 9th St, Berkeley, CA 94710	2 units	57 days	\$995,000 (-10%)	
1947 Virginia St	3 units	28 days	\$1,300,000	\$1,460,000
1235 Carrison St	4 units	52 days	\$999,000	\$999,000
2919 Fulton st	4 Units	112 days	\$1,695,000	\$1,550,000
2330 Grant st	4 units	45 days	\$1,225,000	\$1,320,000
906 Channing Way	4 units	30 days	\$1,500,000	\$1,710,000
1610 Russell St	10 Units	38 days	\$2,440,000	\$2,500,000
1235 Carrison st	4 units	45 days	\$999,000	\$999,000
1308 Hopkins st	5 units	89 days	\$1,795, 000	\$1,900,000
2875 California st.	8 units	61 days	\$2,100,000	\$2,178,000
2919 Fulton st.	4 Units	106 days	\$1,695,000	\$1,550,000
1627 Posen Ave	3 Units	76 days	\$1,385,000	\$1,660,000

Oakland				
Address	Details	Market Time	Asking Price	Sale Price
663 Apgar st	4 units	40 days	1,400,000	1,295,000
411 Lusk st	2 units	300 days	749,000	650,000
211 monte vista	4 units	53 days	1,500,000	1,594,000
3942 Wilda ave	4 units	53 days	1,500,000	1,594,000
295 Mather st	3 units	55 days	1,295,000	1,286,000
1808 90th ave	4 units	250 days	729,000	899,000
1524 11th ave	4 units	112 days	1,380,000	1,310,000

All data consolidated from Zillow during January 2020

BERKELEY PROPERTIES AND TOPA APPLICABILITY

BERKELEY PROPERTY TYPE & NUMBER		# OF PROPERTY TYPE W/ TOPA RIGHTS	
Housing Type	Total Number	<u>Previous Investor Applicability Standard:</u> Owner w/3+ rental units	<u>Proposed Applicability Standard:</u> All rental properties; exempt owner-occupied SF homes, including those with ADUs
SF/Townhouse	17,131	323	3,906
Condo	2,286	362	1,246
Duplex/2 units	1,869	247	1,869
Triplex/Duplex w SF/3 units	725	429	725
Fourplex/Triplex w SF/4 units	683	679	683
2-4 SF homes	681	82	681
2-4 units w/rooming house	44	12	44
5+ homes/SF converted to 5+ units	144	144	144
Multi 5+ units	1,174	1,174	1,174
TOTAL	24,737	3452	10,472



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ATTACHMENT 4

DC Apartment buildings and TOPA

As of March 2018, at least 40% of DC's residential units (6.5% of its residential buildings) fell under TOPA; this included 7,510 apartment buildings with 120,619 units. The total number of residential housing units in the city at that time was 297,531 units, 103,250 of which were owner occupied and an unknown number of single-family homes, condominiums and cooperatives that were rented.¹

From 2002-2018, at least 3,500 units were preserved through TOPA.² The city of DC does not have comprehensive TOPA data from before 2002. As of 2019, 4,400 Limited Equity Cooperative (LEC) units existed across 99 buildings; many of these LECs were created through TOPA.³

DC multifamily sales data from 2014-2015 is helpful in understanding the number of TOPA sales that happen every two years.⁴ During that time period, 131 sales of multi-family buildings took place. 32% of these sales (42 buildings) went through the TOPA process. Another 14 sales transacted outside of TOPA but were offered directly to the tenants. Therefore, every two years it is likely that at least 0.6-0.7% of the existing DC rental stock is going through the TOPA process or being purchased by tenants.

More recent data from the DC Department of Housing and Community Development (DHCD) highlights that larger multifamily buildings are the TOPA transactions most often supported with subsidy from DC's Housing Production Trust Fund. DHCD closed funding for 13 TOPA projects of 832 units in FY17 and 9 TOPA projects of 449 units in FY18.⁵ In FY19, DHCD funded acquisitions for 15 TOPA projects, 2 of which were sold to tenants creating an LEC.⁶

¹ *Stock of the District's Housing Stock*. Taylor, Yes Sayin. D.C. Policy Center. March 2018. https://www.dcpolicycenter.org/wp-content/uploads/2018/03/DC-Policy-Center-Housing-Report.final_March25.pdf

² *DC's First Right Purchase Program Helps to Preserve Affordable Housing*. Reed, Jenny. DC Fiscal Policy Institute. September 2013. https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf

DC Multifamily Market Statistics - Multifamily Sales 2014-2015. Greysteel. 2016. <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>

Building a Local Housing Preservation Ecosystem. DC Department of Housing and Community Development. November 2018. <http://oakclt.org/wp-content/uploads/2018/12/Oakland-TOPA-Final.pdf>

³ *Final Report*. DC Limited Equity Cooperative Task Force. October 2019. https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page_content/attachments/Final%20LEC%20Recommendations_10.21.19.pdf

⁴ *DC Multifamily Market Statistics - Multifamily Sales 2014-2015*. Greysteel. 2016. <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>. This data doesn't include single-family or condo sales that went through the TOPA process.

⁵ DC DHCD Performance Oversight Hearing responses to DC Council. February 2019. <https://dccouncil.us/wp-content/uploads/2019/02/dhcd19.pdf>

⁶ DC DHCD Performance Oversight Hearing responses to DC Council. February 2020. <https://dccouncil.us/wp-content/uploads/2020/02/dhcd.pdf>

Criticisms of DC TOPA

Criticism 1: DC TOPA promotes tenant capitalism instead of combating displacement and preserving affordable housing.

Response:

Berkeley's TOPA ordinance is distinguishable from DC TOPA in these three ways:

- 1) Tenants cannot sell their rights.
- 2) Tenants can only assign their rights to Qualified Organizations (QOs) that the city vets. These QOs are affordable housing developers and must meet a list of criteria outlined in the ordinance, such as strict commitments to maintaining the property as affordable, tenant engagement, and other relevant experience.
- 3) All housing purchased through TOPA, whether by tenants or QOs, will have some form of permanent affordability restrictions to ensure affordability for future owners/renters.

Also, despite tenants in DC being able to sell their TOPA rights and receive buyouts from third parties, DC TOPA has still helped preserve thousands of units of housing. Since 2002, at least 3,500 units have been purchased through TOPA, most with public subsidy. The total number of units purchased/preserved through TOPA since its passage in 1980 is obviously much larger, but accurate data was not recorded until 2002. In 2002, DC established its Housing Production Trust Fund, which now has an annual allocation of \$116 million.

Criticism 2: DC TOPA attracts bad actors that hold up owners for money and add time to the sales process. This is why DC got rid of TOPA for Single Family Accommodations (SFAs).

Response:

DC TOPA covered SFAs for 39 years. In 2019, the TOPA law was amended to exempt all SFAs. Unfortunately, a couple of bad actors had convinced several tenants living in owner-occupied Single Family Homes to sell their TOPA rights and then these bad actors held up owners for additional money.

Berkeley's ordinance considered all of this. This is why Berkeley's ordinance does not allow tenants to sell their rights, and therefore prevents bad actors from being able to enter the TOPA process. In addition, Berkeley's TOPA ordinance requires tenants to work with a supportive partner after they have expressed interested in purchasing. Supportive partners will help tenants understand their TOPA rights, how to make corporate decisions, as well as the possible financial costs and support for the transaction.

Finally, Berkeley's housing stock is comprised primarily of small sites and many SFAs, which are not appropriate for most large-scale affordable housing subsidies. TOPA presents a great opportunity to bring these rental properties under permanent affordability and provide much-needed protections to tenants in SFAs who currently have little to no protections. Berkeley's TOPA ordinance also has an exemption for owner-occupied SFAs and owner-occupied SFAs with a secondary dwelling unit if either unit is owner-occupied.



SUPPLEMENTAL AGENDA MATERIAL

For Supplemental Packet 2

Meeting Date: 2/23/21

Item Number:

Item Description: Resolution Recognizing Housing as Human Right; Referring City Manager to Study Financial Feasibility of Municipal Housing Development Pilot Program with Cooperative, Nonprofit, and Public Ownership Models, Administered as Automatic Stabilizers to Guarantee Adequate Housing.

Submitted by: Councilmember Taplin

Amendment would make the following additions to the referral:

- Adding co-sponsor Mayor Arreguín
- Correcting typo on referral date
- Adding ABAG to recommendation for partnering agencies
- Adding AB-387 as reference and attachment
- Adding link for footnote 38
- Non-substantive editorial revisions



ACTION CALENDAR

DATE: 2/23/210

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin, [Mayor Jesse Arreguin \(co-sponsor\)](#)

Subject: Resolution Recognizing Housing as Human Right; Referring City Manager to Study Financial Feasibility of Municipal Housing Development Pilot Program with Cooperative, Nonprofit, and Public Ownership Models, Administered as Automatic Stabilizers to Guarantee Adequate Housing.

RECOMMENDATION

Refer the City Manager's office to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators. Pilot program feasibility study shall include, but not be limited to:

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire [real property](#), develop, and/or maintain [mixed-income and](#) permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission ([MTC](#)) and [Association of Bay Area Governments \(ABAG\)](#), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community

reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.

4-

BACKGROUND

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Guaranteeing Adequate Housing: Global and Local Comparison

International law has recognized a right to adequate housing since the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights, establishing freedoms and entitlements that include security of tenure, privacy, affordability, freedom of movement and non-discriminatory access.¹ By definition, the City of Berkeley has not affirmed this right for at least 1,000 homeless residents, with 813 unsheltered according to the 2019 Homeless Point-in-Time Count in Alameda County.² To obtain secure homeownership, the city's December 2020 median home price of \$1.39 million would require an income over three times as high as Berkeley's 2018 median household income of \$80,000.³ Meanwhile, the state of California leads the nation in its share of the homeless population⁴; over half the state's renters and a third of its homeowners are excessively cost-burdened, paying over 30% of their income for housing; and more than two-thirds of Californians facing excessive housing costs are people of color.⁵ According to the California Budget & Policy Center, "Poor housing quality, living in a low-income neighborhood, overcrowding, moving frequently, and homelessness are all associated with adverse health outcomes."⁶

In urban areas throughout the world, other nations with lower rates of homelessness and housing insecurity provide adequate housing for their citizens through various policies that address housing as public infrastructure. Housing systems are administered in varying degrees of "decommodification,"⁷ ensuring a minimum standard of living through the welfare state above what individuals can obtain through the private market. Different governments approach decommodification of housing through

¹ Office of the United Nations High Commissioner for Human Rights. (2009). *Fact Sheet No. 21: The Right to Adequate Housing. (Rev. 1)*. United Nations: Geneva. Retrieved from

https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf

² https://everyonehome.org/wp-content/uploads/2019/07/ExecutiveSummary_Alameda2019-1.pdf

³ <https://www.zillow.com/berkeley-ca/home-values/>

⁴ Passy, J. (2019). Nearly half of the U.S.'s homeless population live in one state: California. *MarketWatch*. Retrieved from <https://www.marketwatch.com/story/this-state-is-home-to-nearly-half-of-all-people-living-on-the-streets-in-the-us-2019-09-18#>

⁵ Kimberlin, S. (2017). Californians in All Parts of the State Pay More Than They Can Afford for Housing. *California Budget & Policy Center*. Retrieved from <https://calbudgetcenter.org/resources/californians-parts-state-pay-can-afford-housing/>

⁶ Ramos-Yamamoto, A. (2019). Advancing Health Equity: How State Policymakers Can Increase Opportunities for All Californians to Be Healthy. *California Budget & Policy Center*. Retrieved from <https://calbudgetcenter.org/blog/advancing-health-equity-how-state-policymakers-can-increase-opportunities-for-all-californians-to-be-healthy/>

⁷ Esping-Andersen, G. (1990). *The Three Worlds of Welfare Capitalism*. Princeton, NJ: Princeton University Press. p. 21-23.

strategies for subsidizing the supply channel by providing low-cost housing, or the demand channel by supporting consumer purchasing power.

In two case studies, the cities of Vienna and Singapore own and operate public housing development corporations that retain some amount of land title in the common trust in order to stabilize the housing market—either by restricting ownership to leases, or encouraging low-cost rentals and developing on public land holdings. Both also retain a “reserve supply” of land and/or development rights to stabilize housing affordability through recessionary demand shocks. These cities are able to provide housing to any citizen at an affordable cost regardless of their income, effectively reinvesting revenues from higher-income households to subsidize housing for lower incomes. In Tokyo, while housing is more commodified, Japanese federal land-use policy treats housing essentially as a non-durable consumer good, prioritizing its utility as shelter over its capacity to increase financial wealth.⁸

Vienna and Singapore rank 1st and 25th on the 2019 Mercer Quality of life ranking, respectively, above any city in the United States. Vienna has held the top position for the past ten years.⁹

The United States has tended toward the extreme opposite end in the spectrum of housing commodification. Modern economic policy and property rights have treated housing primarily as means to a guarantee for growing financial asset wealth and enforce a white supremacist caste system. Housing is commodified to an extreme degree that is incompatible with material needs of the general population. Subsidies for both supply and demand channels have been historically insufficient while support for American asset wealth primarily in white communities has been more robust and resilient. This has widened the racial wealth gap between white and Black households, and ultimately proved incompatible with universal housing security.

The Great Recession of 2008 effected an abjectly cruel transfer of wealth from lower-income Black homeowners¹⁰ targeted with predatory subprime loans to private equity firms¹¹ buying up large portfolios of “distressed” properties before the economy recovered. This longstanding pattern of usury and community displacement further has further excluded people of color from the fruits of economic recovery and deepens the racial wealth gap. We risk repeating this process in the current COVID-19 depression, as renters and low-income homeowners face an unprecedented homelessness crisis

⁸ Karlinsky, S. et al. (2020). From Copenhagen to Tokyo: Learning from International Housing Delivery Systems. *SPUR Regional Strategy Briefing Paper*. Retrieved from <https://www.spur.org/publications/white-paper/2020-08-06/copenhagen-tokyo>.

⁹ Mercer. (2019). Quality of life city ranking. Retrieved from <https://mobilityexchange.mercer.com/insights/quality-of-living-rankings>

¹⁰ White, G.B. (2015). The Recession’s Racial Slant. *The Atlantic*. Retrieved from <https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/>

¹¹ Warren, E. & Fife, C. (2020). Families see a looming catastrophe. Private equity firms see dollar signs. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/opinions/2020/08/06/nation-is-facing-housing-crisis-private-equity-firms-just-see-dollar-signs/>

due to job losses during the pandemic, while relatively affluent cities like Berkeley see median home prices continue to rise.

Local, state and federal governments alike have made routine practice of devaluing or outright destroying black asset wealth for the benefit of more affluent, exclusively white communities, most visibly through usurious redlining and destructive “urban renewal.”¹² Fundamentally, the government has devoted more resources in absolute terms to protecting the right to capital gains of property owners, at the expense of adequate housing and any right to basic living standards for Black people. After a brief wartime period in which public housing was conceived to sustain middle-class households U.S. public housing developments in the mid-20th century were notoriously racially segregated poverty traps located far from public services and economic opportunity, starved of operational funds and “destined to fail.”¹³

The inequities of our current housing crisis are rooted in histories of Jim Crow segregation, mortgage guarantees of the New Deal era, and deflationary policy of the late 1970s. Where neighborhoods were once segregated explicitly by racial covenants and *de jure* statutes, government mortgage guarantees sublimated this segregation into self-reinforcing actuarial assessments promulgated by the Home Owners Loan Corporation (HOLC) and Federal Housing Administration (FHA), established under President Franklin Roosevelt. This practice known as “redlining” infamously denied mortgage credit to primarily Black and Latinx neighborhoods throughout the country, giving more affluent white neighborhoods exclusive access to risk-free mortgage credit while trapping communities of color in poverty. According to UC Berkeley’s Urban Displacement Project, neighborhoods that were once redlined are now at greater risk of gentrification and displacement.¹⁴

The United States and other anglophone countries further commodified housing in order to provide welfare through asset ownership to compensate for stagnation in real purchasing power.¹⁵ In response to high inflation of the 1970s, the Federal Reserve drastically raised interest rates beginning in 1978, triggering a period of deflation that boosted asset prices while suppressing real wages and economic growth. With accompanying deregulation of the financial sector, housing became “financialized” as a special asset class attracting a rush of speculative capital, because it retained the imprimatur of government mortgage guarantees while enjoying fewer capital controls, practically guaranteeing that household asset wealth would outpace low inflation and stagnating wages.¹⁶ A growing body of research strongly suggests that financialization

¹² Baradaran, M. (2017). *The Color of Money: Black Banks and the Racial Wealth Gap*. Cambridge, MA: Harvard University Press. p. 141.

¹³ Perry-Brown, N. (2020). *How public housing was destined to fail*. Greater Greater Washington. Retrieved from <https://ggwash.org/view/78164/how-public-housing-was-destined-to-fail>

¹⁴ The Legacy of Redlining. (2018). Retrieved from <https://www.urbandisplacement.org/redlining>

¹⁵ Adkins, L. et al. (2019). Class in the 21st century: Asset inflation and the new logic of inequality. *Environment and Planning A: Economy and Space*. doi.org/10.1177/0308518X19873673

¹⁶ Feygin, Y. (2021). The Deflationary Bloc. *Phenomenal World*. Retrieved from <https://phenomenalworld.org/analysis/deflation-inflation>.

of housing has intensified business cycle volatility and deepened periodic recessions, as “consumption became more correlated with housing wealth.”¹⁷

Berkeley pioneered other methods of guaranteeing housing price inflation: single-family zoning was first established in the Elmwood and Claremont neighborhoods to sustain real estate values and exclude racial minorities. The Mason-McDuffie Company developed residential neighborhoods in Berkeley with racial covenants in property deeds preventing lease or sale to anyone of “African or Mongolian descent,” and lobbied for restrictive zoning in 1916 to protect against “disastrous effects of uncontrolled development”¹⁸—the implied “disastrous effects” being stable prices and an influx of Black and Chinese residents.

Restrictive zoning reduces multifamily development, constrains supply and enforces a high price floor on dwelling units in high-cost land¹⁹. A 2015 study by the nonpartisan Legislative Analyst Office found that growth control policies increased home prices by 3-5%.²⁰ Correspondingly, emerging research from UC Berkeley finds evidence that new market-rate development in San Francisco lowered rents by 2% on parcels within 100 meters and reduced displacement risk for renters in that area by 17%,²¹ while a 2016 study by UC Berkeley’s Urban Displacement Project found that affordable housing has double the effect of mitigating displacement as market-rate housing.²² According to a 2001 study on homelessness in California, “rather modest improvements in the affordability of rental housing or its availability can substantially reduce the incidence of homelessness in the United States.”²³

Exclusionary zoning effectively limits where and to what extent these effects can occur, maintaining the spatial segregation of redlining after the latter practice was outlawed by the 1968 Fair Housing Act. In a study of 197 metropolitan areas in the United States, UC Merced political scientist Jessica Trounstein has found that restrictive land use policies predicted sustained racial segregation in cities between 1970 and 2006, while larger, sustained white minorities were predictive of cities’ resistance to new residential

¹⁷ Ryan-Collins, J., et al. (2017). *Rethinking the Economics of Land and Housing*. London, UK: New Economics Foundation.

¹⁸ Lory, Maya Tulip. (2013). A History of Racial Segregation, 1878–1960. *The Concord Review*. Retrieved from <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

¹⁹ Murray, C. & Schuetz, J. (2019). Is California’s Apartment Market Broken? The Relationship Between Zoning, Rents, and Multifamily Development. *UC Berkeley Turner Center for Housing Innovation*. (2019).

²⁰ Legislative Analyst Office. (2015). California’s High Housing Costs: Causes and Consequences. Retrieved from <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>

²¹ Pennington, K. (2021). Does Building New Housing Cause Displacement?: The Supply and Demand Effects of Construction in San Francisco. *Working Paper*. Retrieved from https://www.dropbox.com/s/oplls6utgf7z6ih/Pennington_JMP.pdf?dl=0.

²² Zuk, M. & Chapple, K. (2016). Housing Production, Filtering and Displacement: Untangling the Relationships. *Institute of Governmental Studies Research Brief*. Berkeley, CA: UC Berkeley IGS. Retrieved from https://www.urbandisplacement.org/sites/default/files/images/udp_research_brief_052316.pdf

²³ Quigley, J.M. (2001). Homeless in America, Homeless in California. *The Review of Economics and Statistics*. 83(1): 37–51.

development.²⁴ Research from UC Berkeley's Othering and Belonging Institute finds that single-family zoning in the Bay Area is strongly correlated with high-resource, high-opportunity, and highly segregated communities.²⁵ Karen Chapple, Director of UC Berkeley's Urban Displacement Project, stated in a February 25, 2019 letter to the Berkeley City Council, "the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today's exclusionary areas in the East Bay...Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today." These inequitable distributions of access to housing and asset appreciation has historically perpetuated and remains a primary factor in country's the racial wealth gap.²⁶

The highly commodified political economy in the United States is enforced by a doctrine of strong property rights for protecting capital gains from asset inflation (colloquially referred to as "financialization" or "commodification") over rights to material well-being, perpetuating a permanent affordability crisis for most workers who did not already own their homes. This fundamental conflict of moral values and economic rights came into stark display in early 2020, when the group Moms 4 Housing occupied a vacant home in West Oakland owned by Wedgewood Inc., a private equity firm that flipped houses nationwide. In the early hours of January 14, 2020, Alameda County sheriff's deputies enforced an eviction order with guns and armored cars on display, arresting four members of the group who had previously been homeless or housing insecure. On January 20, Oakland Mayor Libby Schaaf and Governor Newsom announced a deal with Wedgewood to sell the house to the Oakland Community Land Trust, and offer first right of refusal to the land trust for its property portfolio in Oakland for permanently affordable housing.²⁷

This political value statement, backed by a real transfer of wealth and rights of secure tenure, does not need to be an *ad hoc* bartering between the sweat equity of community organizers, the bully pulpit of elected officials, and the real physical danger of tactical civil disobedience. These values can instead be operationalized as part of the baseline administration of public services. In response to the Moms 4 Housing success, the state legislature passed SB-1079 by Senator Nancy Skinner (D-Berkeley) in September of 2020, authorizing fines of from \$2,000 to \$5,000 per day on buyers of foreclosed homes left vacant for over 90 days; banning bundled sales of foreclosed houses; and giving

²⁴ Trounstein, J. (2020). *The Geography of Inequality: How Land Use Regulation Produces Segregation*. *American Political Science Review*. Cambridge: Cambridge University Press.

²⁵ Menendian, S., et al. (2020). *Single Family Zoning in the Bay Area: Characteristics of Exclusionary Communities*. *UC Berkeley Othering & Belonging Institute*. Retrieved from <https://belonging.berkeley.edu/single-family-zoning-san-francisco-bay-area>

²⁶ Darity Jr, W. et al. (2018). *What We Get Wrong About the Racial Wealth Gap*. *Samuel DuBois Cook Center on Social Equity*. Durham, NC: Duke University. Retrieved from <https://socialequity.duke.edu/wp-content/uploads/2020/01/what-we-get-wrong.pdf>

²⁷ La Ganga, M. L. (2020). *Evicted Oakland moms will get their house back after a deal with Redondo Beach company*. *Los Angeles Times*. Retrieved from <https://www.latimes.com/california/story/2020-01-20/homeless-moms-4-housing-oakland-wedgewood-properties-deal>

tenants, nonprofits, and community land trusts 45 days to match the final highest bid for the property.

Aligning public financing with more inclusive land-use regulations can offer a path to automating these sorts of progressive, reparative distributions of material well-being and housing security at a broader scale.

Automatic Stabilizers

Economists have proposed “automatic stabilizers” to respond to recessions with increased urgency since Obama Administration’s stimulus efforts following the Great Recession were hamstrung by partisan gridlock in Congress. Federal Reserve economist Claudia Sahm developed the “Sahm rule” for defining the onset of a recession with a specific threshold of sustained unemployment, and a proposal in which this rule could trigger automatic stimulus payments “to broadly support aggregate demand in a recession.”²⁸ In her testimony on January 19, 2021 at a confirmation hearing for her appointment to Treasury Secretary, former Federal Reserve chair Janet Yellen stated: “Our current system needs both updating and expansion... Designing and implementing a modern and effective system of automatic stabilizers is an important step to take now, so that we can minimize the negative impacts of any future recessions.”²⁹

Issuing stimulus payments automatically and universally to households rather than negotiating periodically in partisan politics could prevent widespread poverty among the least fortunate and also blunt a recession’s severity by sustaining consumer demand—stabilizing both material conditions for lower-income households, and consumption writ large. Analogous benchmarks can be operationalized to “stabilize” housing security in the city throughout business cycles and state planning certification periods. For example, urban planner Alain Bertaud has proposed automating updates to land-use policy as a function of land values to programmatically enforce widespread housing affordability.³⁰

President Joseph R. Biden’s 2020 campaign platform included massive increases to federal funding for public housing and the Section 8 housing voucher program.³¹ If the new presidential administration can increase housing subsidies through both supply and demand channels to more closely meet present and future needs, the City of Berkeley

²⁸ Sahm, C. (2019). Direct Stimulus Payments to Individuals. *The Hamilton Project*. Retrieved from https://www.hamiltonproject.org/assets/files/Sahm_web_20190506.pdf

²⁹ Yellen, J. (2021). Hearing to Consider the Anticipated Nomination of the Honorable Janet L. Yellen to Secretary of the Treasury. *U.S. Senate Committee on Finance*. Retrieved from <https://www.finance.senate.gov/imo/media/doc/Dr%20Janet%20Yellen%20Senate%20Finance%20Committee%20QFRs%2001%2021%202021.pdf>

³⁰ Bertaud, A. (2018). *Order Without Design: How Markets Shape Cities*. Cambridge, MA: The MIT Press.

³¹ Biden, J. (2020). The Biden Plan for Investing in our Communities Through Housing. Retrieved from <https://joebiden.com/housing/>

would have more resources to proactively ensure adequate, stable, and non-discriminatory housing is further guaranteed.

Municipal Housing Development

Mixed-income municipal housing development has distinct global variants, and is already currently being explored in the United States. In California, AB-387 also known as “the Social Housing Act of 2021” by Assemblymembers Lee (D-San Jose) and Wicks (D-Oakland), sets forth the intent to “establish the California Housing Authority for the purpose of developing mixed-income rental and limited equity homeownership housing and mixed-use developments to address the shortage of affordable homes for low and moderate-income households.” (See Attachment 3.) Importantly, state revenue bonds for infrastructure projects do not require voter approval.

The state legislature of Hawaii is considering a state-led housing development proposal known as ALOHA Homes, modeled after Singapore’s Housing and Development Board (HDB). SB1 (2019) by State Senator Stanley Chang (D-Oahu) would establish a program within the state’s housing finance agency to use existing and newly-acquired state lands near public transit to develop high-density housing. (See Attachment 2.) The state would sell housing units at-cost to residents on 99-year leases. The agency would establish a dedicated revolving fund to provide low-cost loans to support long-term affordability, property maintenance and development. By leasing public land for development while retaining title in the public trust, public agencies can ensure that a proportionate degree of real estate value increased by public investment can be recaptured for the public benefit.

In Singapore, the resale market for 99-year home leases are regulated to ensure long-term affordability with assistance to help households exchange their leasehold equity for larger or smaller units throughout the lease term to adapt to changing needs as family members age. Over 80% of Singaporeans live in HDB housing developments.

In Austria, over 60% of Vienna’s residents live in social housing, consisting of roughly 200,000 municipally-owned housing units and 220,000 nonprofit-owned units. For non-citizens, a minimum of five years’ residency is required to apply for a social housing unit, and subsidized units must be for a household’s primary residence. Public investments for construction, property management, and preservation of the social housing stock are subsidized by a federal income tax and the state’s general fund, as well as a revolving loan fund managed by the Vienna Housing Fund. The Vienna Housing Fund operates as a community-owned nonprofit land bank, established by Social Democrats in the 1920s with large investments in public land in response to a housing shortage following the First World War. The self-sustaining nonprofit entity acquires existing housing or develops new projects with the aim of long-term affordability.

The Vienna Housing Fund is a major entity developing thousands of new housing units every year, while buying and selling real property on the open market. It maintains a

two-year reserve of land to stabilize its property portfolio throughout real estate market cycles. The Vienna Housing Fund collaborates with the municipal government and nonprofit housing developers to provide affordable housing on public land via low-interest loans for new developments³², with loan payments reinvested into a revolving loan fund for future loans and subsidies.

Vienna also indirectly subsidizes private development by arranging land transfers and low-interest loans with private firms through a competitive bidding process, in which a jury panel evaluates applicants' projects based on criteria for design, sustainability, and affordability. The city rents a portion of the units at affordable rents to lower-income residents, but means-testing is only applied at the initial move-in. Effectively, Vienna's social housing program subsidizes affordable affordable housing through the supply channel rather than the demand channel (i.e. by subsidizing tenants themselves). Unlike Singapore, the city of Vienna's land-use planning promotes rentals over private homeownership, but similarly favors community longevity, recreational facilities, and supportive services. In 2016, the Social Democratic Party of Austria introduced the "wohnbauoffensive"³³—an initiative to streamline construction and permitting to increase housing production by 30%.

There are also examples in present-day California of revolving funds for community land reinvestment that sustain communities across the state. In Palm Springs, the Agua Caliente Band of Cahuilla Indians own and lease land to nearly 20,000 people and businesses in a non-contiguous checkerboard arrangement, with up to 99-year leases for residential development.³⁴ At a larger scale, University of California and California State University systems develop and manage large portfolios of student housing across the state. The universities own tens of thousands of rental beds and dwelling units in urban, suburban and rural jurisdictions. Each UC campus prepares and implements a capital management plan to develop property for rental housing—plans which include revolving reinvestments in their existing portfolio.³⁵ In Berkeley and neighboring jurisdictions, BART is planning for housing development on BART property by leasing land to private and nonprofit developers, using the land-lease model as leverage to achieve the agency's goal of 35% Below Market-Rate housing

³² Wohnpartner Wien. (2019). Vienna Social Housing – Tools of Success. Retrieved from https://socialhousing.wien/fileadmin/user_upload/20190325_Einlageblaetter_Gesamt_Englisch.pdf

³³ Stadt Wien Press service. (2016). "More, faster, cheaper and sustainable" – the City of Vienna is launching an additional housing offensive. Retrieved from <https://www.wien.gv.at/presse/2016/02/17/mehr-schneller-preiswert-und-nachhaltig-stadt-wien-startet-eine-zusaetzliche-wohnbau-offensive>

³⁴ Murphy, R. (2016). Half of Palm Springs sits on rented land. What happens if the leases end? *Desert Sun*. Retrieved from <https://www.desertsun.com/story/money/real-estate/2016/09/22/palm-springs-agua-caliente-land-lease/87944598/>.

³⁵ University of California. (2019). Capital Financial Plan 2019-25. Retrieved from <https://ucop.edu/capital-planning/files/capital/201925/2019-25-cfp.pdf>

systemwide.³⁶ The Berkeley Unified School District is also exploring the potential to develop workforce housing on its properties.³⁷

In 2017, an analysis of city-owned property in Berkeley by the Department of Health, Housing and Community Services found several sites such as the Elmwood Parking Lot, which “would need to be rezoned to support multifamily housing development at a large enough scale to make affordable housing feasible.”³⁸ Other properties identified would require zoning changes and further study at a minimum.

RATIONALE FOR RECOMMENDATION

Public housing development corporations in California could make both short-term and permanent impacts on housing affordability, construction sector employment, and other equity-based outcomes, while operating under standard land-use planning processes already being streamlined under state law.

Recent state legislation such as SB-35 (2017) and SB-330 (2019) already reform municipal land-use authority to support housing production within measurable benchmarks, limiting local discretion in permitting and zoning according to standards set by the Regional Housing Need Allocation (RHNA) process, the Housing Accountability Act (HAA), and the state Housing Element process.³⁹ The state legislature has also moved to increase affordable housing financing for municipalities by establishing the Bay Area Housing Finance Authority (BAHFA) in 2019; and in Senate Constitutional Amendment 2 (2021) by Sen. Ben Allen (D-Santa Monica), proposing removal of the state constitutional requirement for local referendum approval “low-rent” housing with more than 50% of its funding from the local jurisdiction. State law under AB-686 (2018) also requires cities to meet the goals of the Obama Administration’s Affirmatively Furthering Fair Housing rule under the 1968 Fair Housing Act in their housing elements and general plans. However, this policy framework is ultimately enforced by private right of action, on both sides of the issue: unsuccessful litigation attempted to overturn state-compliant by-right permits for housing development in Cupertino⁴⁰, and nonprofit advocates successfully sued the cities of Pleasanton⁴¹ after it failed to produce a state-

³⁶ BART Board of Directors. (2016). Transit-Oriented Development Performance Measures and Targets. Retrieved from https://www.bart.gov/sites/default/files/docs/B-%20TOD%20Performance%20Targets%202040%20Adopted%2012-1-16_0.pdf

³⁷ Doocy, S. (2018). School District Employee Housing in California. *UC Berkeley Terner Center for Housing Innovation*. Retrieved from <https://ternercenter.berkeley.edu/research-and-policy/school-district-employee-housing-in-california/>

³⁸ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/2019-04-25%20Land%20Use%20Agenda%20for%20Posting.pdf

³⁹ Elmendorf, C. et al. (2020). Superintending Local Constraints on Housing Development: How California Can Do It Better. *UC Davis Legal Studies Research Paper Series*.

⁴⁰ Friends of Cupertino v. City of Cupertino. No. 18CV330190. Superior Court of California, County of Santa Clara. (2020).

⁴¹ Urban Habitat Program v. City of Pleasanton. No. A118327. Court of Appeal, First District, Division 2, California. (2008).

compliant Housing Element. But rather than a positive guarantee to universal housing security, enforcement through private right of action puts the onus on the coordination of constituencies by definition with less housing security to assert their diffuse legal rights through state and local jurisdictions.

This adversarial legal environment is inconsistent with a public commitment to universal fair housing. Liability does not ultimately hinge on the public sector's ability to guarantee adequate housing. To the extent that a municipal government chooses to take on such "liabilities" as a moral obligation, it must also devote its real assets to meet this obligation and balance the moral ledger. Local governments can coordinate and amplify their resources to improve housing outcomes through more inclusive land-use regulations, and an expanded authority as lender and lessor of last resort.

However, the United Nations Office of the High Commissioner for Human Rights (OHCHR) specifies that the right to adequate housing "clearly does not oblige the Government to construct a nation's entire housing stock."⁴²

Rather, the right to adequate housing covers measures that are needed to prevent homelessness, prohibit forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that everyone's housing is adequate. These measures can require intervention from the Government at various levels: legislative, administrative, policy or spending priorities. It can be implemented through an enabling approach to shelter where the Government, rather than playing the role of housing provider, becomes the facilitator of the actions of all participants in the production and improvement of shelter.

To that end, the City of Berkeley could proactively affirm housing as a human right according to measurable parameters of cost-burden and non-discriminatory access, as well as broader historical data and actionable moral commitments to restorative justice. Rather than *retroactive* enforcement of state housing mandates through private right of action, the City's administrative departments should continuously monitor the availability, adequacy, and equitable distribution of housing as publicly available Housing Justice Indicators, reevaluating policy tools including public investment and planning and development goals as needed to *proactively* guarantee housing as a basic right. A publicly available, user-friendly data dashboard of Housing Justice Indicators could maintain accountability of the City's civic institutions in meeting this mandate.

Vienna's 2016 "wohnbauoffensive" reforms, considered analogously with the Berkeley City Council's 2019 referral for a Missing Middle Report⁴³, are both essentially *ad hoc* responses to an immediate crisis, recognizing that inequitable land-use planning should be reformed to actively promote economic justice. Regular administrative oversight could be implemented to more quickly intervene in these inequities and further prevent

⁴² See footnote 1.

⁴³ https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-23_Item_32_Missing_Middle_Report.aspx

material harm to vulnerable communities. The City Manager's office has already recommended a strategic focus on streamlining and reforming land use policy to enable a greater scale of housing production in its 1000 Person Plan to Address Homelessness.⁴⁴

4. Continue to implement changes to Berkeley's Land Use, Zoning, and Development Review Requirements for new housing with an eye towards alleviating homelessness. If present economic trends continue, the pace with which new housing is currently being built in Berkeley will likely not allow for a declining annual homeless population. Berkeley should continue to streamline development approval processes and reform local policies to help increase the overall supply of housing available, including affordable housing mandated by inclusionary policies.

The calibration of housing stability policy should continuously operate within transparent parameters of community engagement and historical data, so that a pilot program can begin from the outset with a concretely-defined goal of affirmatively redressing racial inequities in wealth, opportunity, health and educational outcomes. State and regional entities such as the state's Tax Credit Allocation Committee (TCAC), the Metropolitan Transportation Commission (MTC), and UC Berkeley scholars already maintain active measures of economic opportunity, racial segregation, transit access, environmental health, and other positive outcomes for developing policy recommendations.

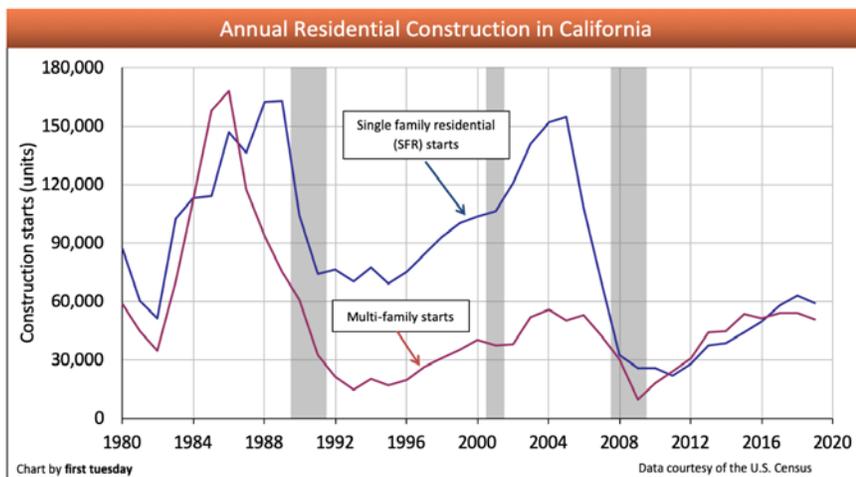
An "automatic stabilizer" paradigm with (a) a revolving land equity fund financing Reparative Housing Justice goals, and (b) periodic empirical review of land-use policy by the Planning Department, could quickly quantify unmet needs for housing security. Developing and implementing responses to needs in the community codified and expeditious administrative process, just as automated stimulus payments could quickly reduce material deprivation during business cycle downturns. Unlike stimulus payments, however, restorative housing justice should be a permanent goal of city service administration.

Public development entities enjoy the benefit of longer-term financial horizons that help produce more stable housing outcomes. Unhindered by the fiduciary duty to produce short-term positive returns for private investors, public housing development agencies are not obligated to cease production and layoff construction workers during recessions.

The private market has been incapable of meeting the need for shelter in California across business cycles. Private capital bids up the costs of inputs during upcycles, but financing dries up during recessions as investors flee the volatile market. Recovery in the construction sector is sluggish, but demand for shelter does not disappear.

⁴⁴ https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx

Construction rates collapsed after the Great Recession of 2008, but as of 2020, they had barely recovered to rates of the previous recession of 2001.⁴⁵



In a crudely Keynesian paradigm, these downturns are precisely when the public sector should step in to ~~compensate with~~ sustain housing development to meet the need for shelter, sustain employment, and boost aggregate demand. Unfortunately, California's housing market volatility limits the state and local government's resources when they are needed the most. For instance, California's construction workforce in 2017 lagged below its historic peak in 2006, equivalent to the size of the workforce at start of the economic recovery in 2011.⁴⁶ In contrast, Vienna's social housing program also stabilizes employment in the region by employing 20,000 workers in the building trades.

Compounding this structural deficit, state and local funding sources for affordable housing are pro-cyclical and likelier to see a decline in revenues during economic downturns. Berkeley's inclusionary zoning and Affordable Housing Mitigation Fee produce Below Market-Rate homes or revenues for the Housing Trust Fund contingent on "value capture" policies that rely on the willingness of private capital to invest in the value. The Low Income Housing Tax Credit program (LIHTC), the linchpin of affordable housing financing in the United States, relies on the incentive of corporate tax liability by providing tax credits to large corporations and financial institutions in exchange for equity in low-income housing projects within a finite time horizon. Reductions in

⁴⁵ The slowing trend in California construction costs. (2019). first tuesday Journal. Retrieved from <https://journal.firsttuesday.us/the-rising-trend-in-california-construction-starts/17939/>

⁴⁶ Littlehale, S. (2019). Rebuilding California: The Golden State's Housing Workforce Reckoning. *Smart Cities Prevail*. Retrieved from https://www.smartcitiesprevail.org/wp-content/uploads/2019/01/SCP_HousingReport.0118_2.pdf

corporate profits during recessions and cuts to the corporate tax rate have both reduced the value of these tax credits periodically.⁴⁷

At the same time, highly leveraged private equity firms that specialize in liquidation of large portfolios or “asset stripping” benefit from volatile recessions that displace lower-income homeowners primarily in communities of color with less liquid capital to sustain riskier mortgage debt. Poorer households, primarily Black and Latinx residents, are more likely to end up trapped in cycles of poverty and homelessness, suffering for the benefit of wealthier and whiter financial institutions.

The Vienna Housing Fund offers a model for building wealth in the local community and affirmatively redressing the historic inequities intensified by cyclical volatility. By providing a revolving low-interest loan fund for tenants, nonprofits, limited equity cooperatives and Community Land Trusts, the City could plan for optimizing housing decommodification to meet concrete benchmarks in material outcomes: eliminating involuntary displacement, repairing wealth inequities in communities of color, and maintaining market price parity with regional incomes.

Rather than bearing 100% of project costs independently, a municipal fund could seek to partner with state and regional mechanisms for land value redistribution, such as Transit Value Capture Districts (TVCDs)⁴⁸ or Enhanced Infrastructure Finance Districts (EIFDs), which have been studied or proposed for financing affordable housing and other capital costs at BART stations.

As a countercyclical policy to sustain affordable housing financing across market cycles, a municipal revolving loan fund could provide loan guarantees or bridge loans to LIHTC developments to ensure their completion. As a reparative anti-displacement policy, a revolving loan fund could reinforce the city’s Local Preference policy for affordable housing included in the Adeline Corridor Specific Plan by providing favorable loan terms to community land trusts, tenant acquisitions, and nonprofit affordable housing developments that prioritize the return of formerly displaced residents from low-income communities of color. The loan fund can also seek matching funds from the newly-established Bay Area Housing Finance Authority (BAHFA), in direct partnership with the MTC and Association of Bay Area Governments (ABAG). In order to provide more housing security across the economic spectrum, a municipal revolving loan fund can consider more generous loan renegotiation terms or loan forgiveness, including the option of paying loans back to the fund in equity stakes.

The City of Berkeley is fortunate to not find itself in the same conditions as a bombed-out postwar Vienna, which made the consolidation of a large public land portfolio for the

⁴⁷ Scally, C. et al. (2018). The Low-Income Housing Tax Credits: Past Achievements, Future Challenges. *Urban Institute*. Retrieved from https://www.urban.org/sites/default/files/publication/98761/lihtc_past_achievements_future_challenges_finalize_1.pdf.

⁴⁸ Sagehorn, D. & Hawn, J. (2020). Transit Value Capture for California. *Common Ground California*. Retrieved from http://cacommonground.org/pdf/2020-12_Transit_Value_Capture.pdf

Vienna Housing Fund tragically inexpensive. However, Berkeley is blessed with a robust and growing tax base. Initially, such a loan fund may start small, with seed capital from the city's Small Sites Program and/or bootstrapped with Berkeley's existing real property portfolio, but over time it would be able to draw upon its growing portfolio of assets to self-finance operating costs while investing in new affordable housing projects.⁴⁹ A budget referral should only proceed following a feasibility study to identify policy and funding goals for monitoring and addressing Housing Justice Indicators.

Homelessness and housing insecurity are the result of deliberate but diffuse policy choices. The feasibility of permanently guaranteeing housing security in Berkeley remains unknown, but our community nevertheless recognizes the imperative to make different policy choices to that end. The City of Berkeley can build on the precedents and procedures established in state law, affirm housing as a human right, and enforce concrete goals toward reparative housing justice as a permanent mandate of our municipal public service.

ALTERNATIVES CONSIDERED

The Berkeley City Council and the city's voters have taken clear steps to invest in housing security and affordable housing production. To the extent that the City is already developing and implementing affordable housing policies, the feasibility of these policy tools would not be mutually exclusive with other public investments and reforms currently underway.

ENVIRONMENTAL IMPACTS

Mixed-income housing development adjacent to frequent, reliable public transit and walkable street infrastructure can further the goals of the City's 2017 Climate Action Plan Update⁵⁰, which include:

Goal 4. Increase compact development patterns (especially along transit corridors)

Encouraging sustainable modes of travel such as cycling, walking, and public transit, is fundamentally tied to compact development patterns and the mix of land uses near transit hubs and jobs. For example, evidence shows that people who live near transit drive between 20% and 40% less than those who do not.

The City's 2018 Greenhouse Gas Inventory found that transportation accounted for 60% of Berkeley's greenhouse gas (GHG) emissions.⁵¹ According to a 2018 Progress Report

⁴⁹ Baxamusa, M. (2020). A New Model for Housing Finance: Public and Private Sectors Working Together to Build Affordability. *Routledge Focus*. p. 123.

⁵⁰ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/2017-12-07%20WS%20Item%2001%20Climate%20Action%20Plan%20Update.pdf

⁵¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx

from the California Air Resources Board: “Even if the share of new car sales that are [zero-emission electric vehicles] grows nearly 10-fold from today, California would still need to reduce VMT [Vehicle Miles Traveled] per capita 25 percent to achieve the necessary reductions for 2030.”⁵² A 2019 report by the United Nations’ International Resource Panel (IRP) emphasizes curbing suburban sprawl as a strategy to curb GHG emissions in urban areas that can also enhance the material outcomes provided by public services: “Optimizing densities and reducing sprawl also improves the sharing of resources (e.g. shared walls and roofs in apartment blocks) and reduces the distances that need to be covered by infrastructure networks (e.g. shorter pipes), allowing for savings in the materials and costs associated with service provision.”⁵³

Critically, though, economic integration is vital to promoting an absolute reduction in per capita VMT. Mixed-income development providing transit-accessible housing security across the entire economic spectrum should maximize the potential for both reducing the carbon footprints of affluent, higher-emission households, and preventing the displacement of poorer, lower-emission households to higher-VMT suburban areas with larger per capita carbon footprints.

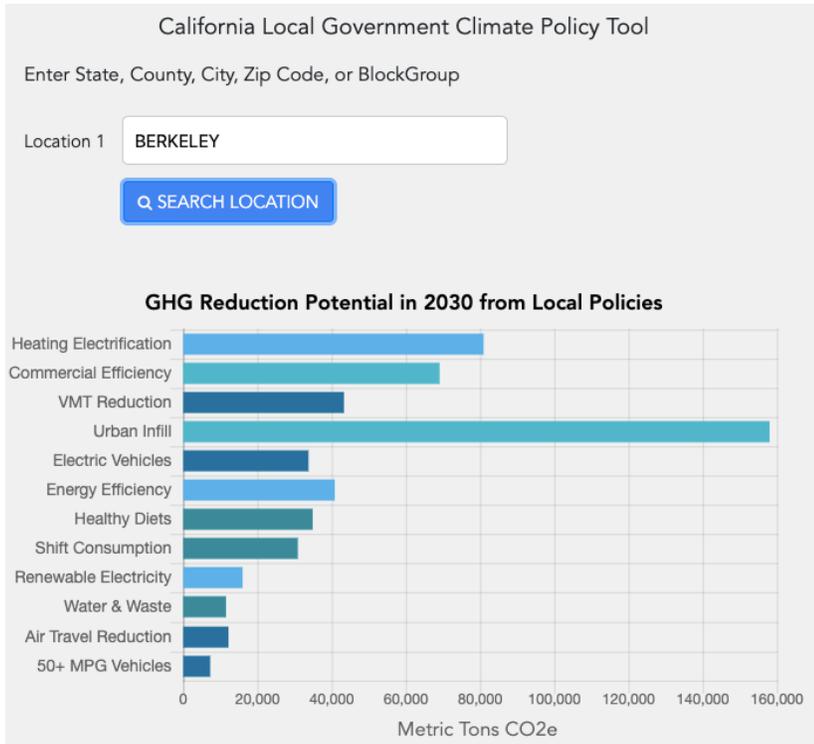
While research from UC Berkeley⁵⁴ has found that wealthier households see larger emissions reductions from living in denser urban areas, a recent study of displacement and gentrification in Seattle also found significant increases in GHG emissions when lower-income households were displaced to outer suburbs with higher VMT land-use patterns and longer commutes.⁵⁵ Notably, the same UC Berkeley study evaluates emission reduction potentials of a suite of municipal public policies in 700 California cities. Using the modeling from this study, the California Local Government Policy Tool from the Cool Climate Network shows that urban infill development offers the greatest potential for mitigating Berkeley’s GHG emissions.

⁵² https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

⁵³ United Nations IRP. (2019). *The Weight of Cities: Resource Requirements of Future Urbanization*. Retrieved from <https://www.resourcepanel.org/reports/weight-cities>

⁵⁴ Jones et al. (2018). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*, 3(2). DOI: 10.17645/up.v3i2.1218

⁵⁵ Rice et al. (2020). Contradictions of the Climate-Friendly City: New Perspectives on Eco-Gentrification and Housing Justice. *International Journal of Urban and Regional Research*, 44(1):145-165.



FISCAL IMPACTS

TBD.—Staff time on financial feasibility study. The City Manager’s office has projected a \$12.7 million annual cost to achieve strategic goals enumerated in the 1000 Person Plan to End Homelessness by 2023, but the costs of reforming land use to affirmatively further housing justice remains unquantified. Because such a pilot program would aim to include a broader range of income levels and larger projects, project costs may ultimately not be comparable to the Small Sites Program. Feasibility study should aim for a long-term self-sustaining fiscal structure for Reparative Justice Revolving Loan Fund and identify hard costs of gathering, monitoring and planning policy directives in response to Housing Justice Indicators.

CONTACT

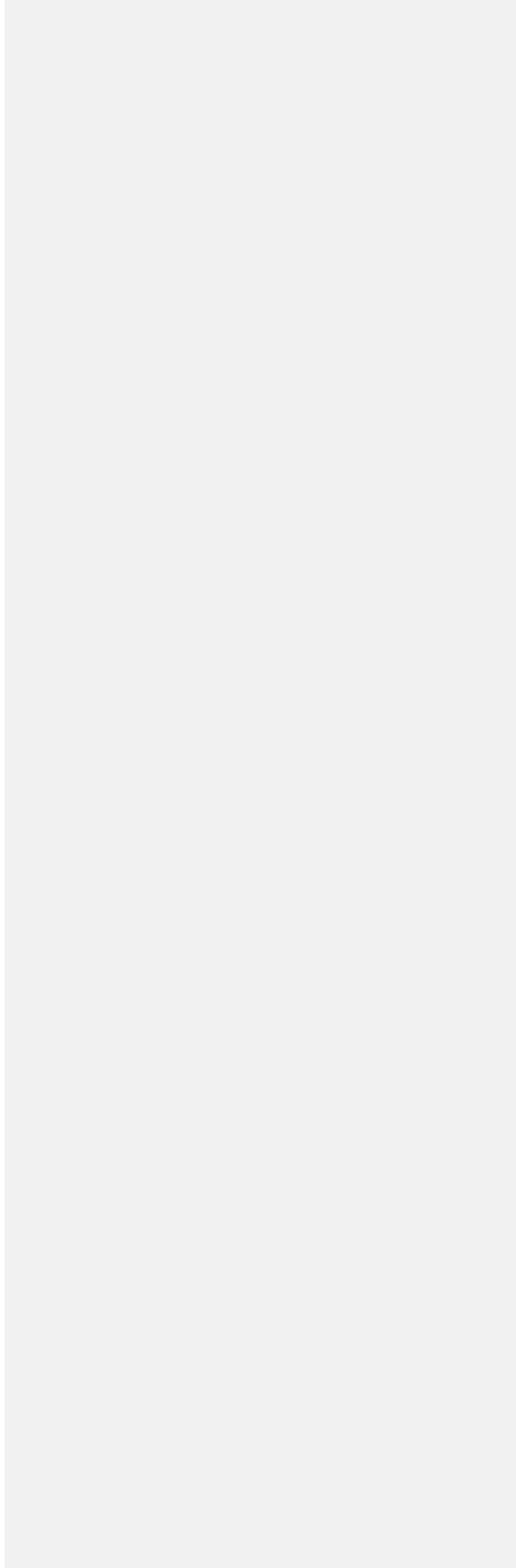
Councilmember Terry Taplin (District 2), 510-983-7120, ttaplin@cityofberkeley.info

ATTACHMENTS/SUPPORTING MATERIALS

1. Resolution
2. Senate Bill 1 (2019), State of Hawaii

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| [2-3. Assembly Bill 387 \(2021\), State of California](#)



A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the cost and
2 availability of housing in the State are significant challenges
3 facing Hawaii residents. Although Hawaii has the tenth highest
4 median wage nationally, living expenses are two-thirds higher
5 than the rest of the nation, with the cost of housing being a
6 major contributing factor. In September 2018, the median price
7 for a single-family home on Oahu rose to \$812,500, while the
8 median price for condominiums on Oahu rose to \$428,000.
9 According to a local news report, a household would need to earn
10 almost \$160,000 annually to afford to buy a home on Oahu, making
11 homeownership out of reach for many of Hawaii's residents,
12 especially first-time buyers.

13 Because of the many barriers hindering the production of
14 new housing, such as geographic limitations, lack of major
15 infrastructure, construction costs, and government regulation,
16 the State and housing developers have not been able to produce
17 enough housing for Hawaii residents. According to a 2015 report



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1 from the department of business, economic development, and
2 tourism, the projected long-run estimate of demand for total new
3 housing in Hawaii is between 64,700 to 66,000 for the 2015 to
4 2025 period. The legislature has responded through the passage
5 of various legislation. During the regular session of 2016, the
6 legislature passed a bill enacted as Act 127, Session Laws of
7 Hawaii 2016, that, among other things, establishes a goal of
8 developing or vesting the development of at least 22,500
9 affordable rental housing units ready for occupancy by the end
10 of 2026. During the regular session of 2017, the legislature
11 passed a bill enacted as Act 54, Session Laws of Hawaii 2017, to
12 expand the types of rental housing projects that can be exempt
13 from general excise tax, thereby encouraging the development of
14 rental housing projects targeted for occupancy by households at
15 or below the one hundred forty per cent and eighty per cent area
16 median income levels. During the regular session of 2018, the
17 legislature passed a bill enacted as Act 39, Session Laws of
18 Hawaii 2018, that, among other things, provides an estimated
19 total value of \$570,000,000 to address Hawaii's affordable
20 rental housing crisis and is expected to generate more than
21 25,000 affordable units by the year 2030.



1 Despite these efforts, the amount of new construction of
2 housing, especially for low- to middle-income families,
3 continues to be inadequate as the supply of housing remains
4 constrained while demand for housing increases. This lack of
5 supply leads to higher housing prices and rents for households
6 of all income levels, leaving all tenants with less disposable
7 income, increasing the personal stress on buyers and renters,
8 and exacerbating overcrowding and homelessness. Given these
9 consequences, the lack of affordable housing requires the
10 concentrated attention of state government at the highest level.

11 The legislature further finds that Singapore faced a
12 housing crisis in the 1940s through 1960s but was subsequently
13 able to provide nearly one million residential units for its
14 citizens. The housing and development board -- the government
15 entity responsible for the rapid increase in housing development
16 -- plans, develops, and constructs the housing units, including
17 commercial, recreational, and social amenities. The result is
18 that units built by the housing and development board house
19 eighty per cent of the resident population and that, overall,
20 ninety per cent of the resident population are owners of their
21 units. Through government loans, subsidies, and grants and the



1 use of money saved through a government-run mandatory savings
 2 program, residents are able to purchase residential units at an
 3 affordable price, including options to upgrade to a better
 4 living environment in the future.

5 The legislature further finds that with Honolulu's
 6 construction of an elevated rail transit system, the State has
 7 an opportunity to enhance Oahu's urban environment and increase
 8 the quality of life for residents by increasing the affordable
 9 housing inventory and eliminating the need for personal
 10 automobiles, among other public benefits. As the largest
 11 landowner of properties along the transit line, with
 12 approximately two thousand acres under the jurisdiction of
 13 various departments, the State must be proactive in establishing
 14 a unified vision and approach toward redevelopment of its
 15 properties to maximize the benefits of state lands available for
 16 redevelopment.

17 The purpose of this Act is to:

- 18 (1) Establish the ALOHA homes program to facilitate the
- 19 creation of low-cost leasehold homes for sale to
- 20 Hawaii residents on state-owned land near public
- 21 transit stations; and



1 (2) Authorize the Hawaii housing finance and development
 2 corporation to sell the leasehold interest in
 3 residential condominium units located on state lands
 4 for lease terms of ninety-nine years.

5 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
 6 amended by adding two new subparts to part II to be
 7 appropriately designated and to read as follows:

8 "B. ALOHA Homes Program

9 **§201H-A Definitions.** As used in this subpart, the
 10 following terms have the following meanings, unless the context
 11 indicates a different meaning or intent:

12 "ALOHA" means affordable, locally owned homes for all.

13 "ALOHA home" means a residential unit within the urban
 14 redevelopment district.

15 "Commercial project" means an undertaking involving
 16 commercial or light industrial development, which includes a
 17 mixed-use development where commercial or light industrial
 18 facilities may be built into, adjacent to, under, or above
 19 residential units.

20 "High density" means a project or area that has at least
 21 two hundred fifty units per acre.



1 "Multipurpose project" means a project consisting of any
2 combination of a commercial project, redevelopment project, or
3 residential project.

4 "Owner-occupied residential use" means any use currently
5 permitted in existing residential zones consistent with owner
6 occupancy, but shall not mean renting or leasing to any tenant
7 or lessee of any kind.

8 "Project" means a specific work or improvement, including
9 real and personal properties, or any interest therein, acquired,
10 owned, constructed, reconstructed, rehabilitated, or improved by
11 the corporation, including a commercial project, redevelopment
12 project, or residential project.

13 "Public agency" means any office, department, board,
14 commission, bureau, division, public corporation agency, or
15 instrumentality of the federal, state, or county government.

16 "Public facilities" includes streets, utility and service
17 corridors, and utility lines where applicable, sufficient to
18 adequately service developable improvements in the district,
19 sites for schools, parks, parking garages, sidewalks, pedestrian
20 ways, and other community facilities. "Public facilities" also
21 includes public highways, as defined in section 264-1, storm



1 drainage systems, water systems, street lighting systems, off-
2 street parking facilities, and sanitary sewerage systems.

3 "Public transit station" means:

4 (1) A station connected to a locally preferred alternative
5 for a mass transit project; or

6 (2) For the city and county of Honolulu, a station of the
7 Honolulu rail transit system.

8 "Redevelopment project" means an undertaking for the
9 acquisition, clearance, replanning, reconstruction, and
10 rehabilitation, or a combination of these and other methods, of
11 an area for a residential project, for an incidental commercial
12 project, and for other facilities incidental or appurtenant
13 thereto, pursuant to and in accordance with this subpart. The
14 terms "acquisition, clearance, replanning, reconstruction, and
15 rehabilitation" shall include renewal, redevelopment,
16 conservation, restoration, or improvement, or any combination
17 thereof.

18 "Residential project" means a project or that portion of a
19 multipurpose project, including residential dwelling units,
20 designed and intended for the purpose of providing housing and
21 any facilities as may be incidental or appurtenant thereto.



1 "Small and medium vendor" means a commercial vendor that
2 employs nine hundred ninety-nine employees or less.

3 §201H-B ALOHA homes program. There is established the
4 ALOHA homes program for the purpose of providing low-cost, high
5 density leasehold homes for sale to Hawaii residents on state-
6 owned lands within a one-half mile radius of a public transit
7 station.

8 §201H-C Community and public notice requirements; posting
9 on the corporation's website; required. For the purposes of
10 this subpart, the corporation shall adopt community and public
11 notice procedures pursuant to chapter 91 that shall include at a
12 minimum:

13 (1) A means to effectively engage the community in which
14 the corporation is planning a development project
15 under this subpart to ensure that community concerns
16 are received and considered by the corporation;

17 (2) The posting of the corporation's proposed plans for
18 any development project under this subpart, public
19 hearing notices, and minutes of its proceedings on the
20 corporation's website;



- 1 (3) The posting of every application for a development
- 2 project on the corporation's website when the
- 3 application is deemed complete;
- 4 (4) Notification by the applicant of any application for a
- 5 development project valued at \$250,000 or more by
- 6 first class United States mail, postage prepaid to
- 7 owners and lessees of record of real property located
- 8 within a three hundred foot radius of the perimeter of
- 9 the proposed project identified from the most current
- 10 list available from the real property assessment
- 11 division of the department of budget and fiscal
- 12 services of the city and county of Honolulu when the
- 13 application is deemed complete; provided that notice
- 14 mailed pursuant to this paragraph shall include but
- 15 not be limited to notice of:
- 16 (A) Project specifications;
- 17 (B) Requests for exemptions from statutes,
- 18 ordinances, charter provisions, and rules
- 19 pursuant to section 201H-38; and
- 20 (C) Procedures for intervention and a contested case
- 21 hearing; and



1 (5) Any other information that the public may find useful
 2 so that it may meaningfully participate in the
 3 corporation's decision-making processes.

4 **§201H-D Urban redevelopment district; established;**
 5 **boundaries.** The urban redevelopment district is established.
 6 The urban redevelopment district shall include all state-owned
 7 and county-owned land within county-designated transit-oriented
 8 development areas or within a one-half-mile radius of a public
 9 transit station in a county with a population greater than five
 10 hundred thousand.

11 **§201H-E Rules; guidelines.** (a) The corporation shall
 12 establish rules under chapter 91 on health, safety, building,
 13 planning, zoning, and land use, which shall supersede all other
 14 inconsistent ordinances and rules relating to the use, zoning,
 15 planning, and development of land and construction thereon.
 16 Rules adopted under this section shall follow existing law,
 17 rules, ordinances, and regulations as closely as is consistent
 18 with standards meeting minimum requirements of good design,
 19 pleasant amenities, health, safety, and coordinated development.
 20 The corporation may provide that lands within the urban
 21 redevelopment district shall not be developed beyond existing



1 uses or that improvements thereon shall not be demolished or
2 substantially reconstructed, or provide other restrictions on
3 the use of the lands.

4 (b) The following shall be the principles generally
5 governing the corporation's action in the urban redevelopment
6 district:

7 (1) The corporation shall endeavor to produce enough
8 housing supply to meet housing demand;

9 (2) Each development may include facilities to replace any
10 facilities that must be removed for the development's
11 construction;

12 (3) Development shall be revenue-neutral to the State, and
13 all revenues generated shall be used for the purposes
14 of this subpart;

15 (4) The corporation may build infrastructure beyond what
16 exists in any development under this subpart and may
17 sell the infrastructure capacity to other private
18 sector developers;

19 (5) The corporation may build common area facilities for
20 any development undertaken pursuant to this subpart,



1 which shall be paid through the sales of ALOHA homes
2 units;

3 (6) Development shall result in a community that permits
4 an appropriate land mixture of residential,
5 commercial, light industrial, and other uses. In view
6 of the innovative nature of the mixed use approach,
7 urban design policies shall be established for the
8 public and private sectors in the proper development
9 of the urban redevelopment district; provided that any
10 of the corporation's proposed actions in the urban
11 redevelopment district that are subject to chapter 343
12 shall comply with chapter 343 and federal
13 environmental requirements; provided further that the
14 corporation may engage in any studies or coordinative
15 activities permitted in this subpart which affect
16 areas lying outside the district, where the
17 corporation in its discretion decides that those
18 activities are necessary to implement the intent of
19 this subpart. The studies or coordinative activities
20 shall be limited to facility systems, resident and
21 industrial relocation, and other activities with the



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1 counties and appropriate state agencies. The
 2 corporation may engage in construction activities
 3 outside of the urban redevelopment district; provided
 4 that the construction relates to infrastructure
 5 development or residential or business relocation
 6 activities; provided further that the construction
 7 shall comply with the general plan, development plan,
 8 ordinances, and rules of the county in which the urban
 9 redevelopment district is located;

10 (7) Existing and future light industrial uses accessory to
 11 shall be permitted and encouraged in appropriate
 12 locations within the urban redevelopment district. No
 13 plan or implementation strategy shall prevent
 14 continued activity or redevelopment of light
 15 industrial and commercial uses which meet reasonable
 16 performance standards;

17 (8) Activities shall be located so as to provide primary
 18 reliance on public transportation and pedestrian
 19 facilities for internal circulation within the urban
 20 redevelopment district or designated subareas;



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- 1 (9) Major view planes, view corridors, and other
- 2 environmental elements such as natural light and
- 3 prevailing winds, may be preserved through appropriate
- 4 regulation and design review;
- 5 (10) All projects shall comply with all applicable
- 6 statutes, rules, and ordinances related to historic
- 7 and cultural resource preservation;
- 8 (11) Where compatible, land use activities within the urban
- 9 redevelopment district shall to the greatest possible
- 10 extent be mixed horizontally within blocks or other
- 11 land areas, and vertically as integral units of multi-
- 12 purpose structures;
- 13 (12) Development shall prioritize maximizing density on
- 14 lands that are most urbanized and most suitable for
- 15 high density; provided that development may require a
- 16 mixture of densities, building types, and
- 17 configurations in accordance with appropriate urban
- 18 design guidelines and vertical and horizontal
- 19 integration of residents of varying incomes, ages, and
- 20 family groups that reflect the diversity of Hawaii.
- 21 Development shall provide necessary community



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1 facilities, such as parks, community meeting places,
 2 child care centers, schools, educational facilities,
 3 libraries, and other services, within and adjacent to
 4 residential development; provided that any school that
 5 is provided by the corporation as a necessary
 6 community facility shall be exempt from school size
 7 requirements as calculated by recent school site area
 8 averages pursuant to section 302A-1602;

9 (13) Public facilities within the urban redevelopment
 10 district shall be planned, located, and developed so
 11 as to support the redevelopment policies for the
 12 district established by this subpart and plans and
 13 rules adopted pursuant to it;

14 (14) Development shall be achieved through the efficient
 15 and cost-effective use of government and private-
 16 sector workforces through public-private partnerships
 17 and other mechanisms to incentivize development to be
 18 on time and on budget;

19 (15) Development shall be designed, to the extent possible,
 20 to minimize traffic, parking, the use of private
 21 automobiles, and noise;



1 (16) Development shall be subject to chapter 104; and

2 (17) Development shall incorporate universal design in
3 compliance with the Americans with Disabilities Act of
4 1990 and Uniform Federal Accessibility Standards, to
5 the extent possible, and exceed accessibility
6 requirements under those authorities.

7 (c) ALOHA homes within the urban redevelopment district
8 shall not be advertised for rent, rented, or used for any
9 purpose other than owner-occupied residential use; provided that
10 the corporation, by rule, shall establish penalties for
11 violations of this subsection up to and including forced sale of
12 an ALOHA home.

13 (d) The corporation shall establish a competition process
14 for selecting the design and development vendors of ALOHA homes
15 with the appropriate number of units to accommodate small and
16 medium vendors. The criteria of the competition process shall
17 include preferences on the basis of prior experience in the
18 State and an understanding of the State's unique culture;
19 provided that the corporation may include an opportunity for
20 community input through public vote. The corporation may



1 provide a stipend in a manner and an amount to be determined by
2 the corporation to competitors pursuant to this subsection.

3 (e) The corporation may transfer ALOHA homes units to the
4 office of Hawaiian affairs and department of Hawaiian home lands
5 for use by their respective beneficiaries.

6 (f) The corporation shall recoup all expenses through the
7 sales of the leasehold interest of ALOHA homes and other revenue
8 sources, including the leasing of commercial projects.

9 **§201H-F Sale of the leasehold interest of ALOHA homes;**
10 **rules; guidelines.** (a) The corporation shall adopt rules,
11 pursuant to chapter 91, for the sale of the leasehold interest
12 of ALOHA homes under its control within the urban redevelopment
13 district; provided that each lease shall be for a term of
14 ninety-nine years. The rules shall include the following
15 requirements for an eligible buyer or owner of an ALOHA home
16 within the district:

17 (1) The person shall be a resident of the State; provided
18 that voting in the most recent primary or general
19 election shall be an indication of residency in the
20 State; provided further that not voting in any primary



1 or general election creates a rebuttable presumption
2 of non-residency;

3 (2) The person shall not use the ALOHA home for any
4 purpose other than owner-occupied residential use; and

5 (3) The person, or the person's spouse, shall not own any
6 other real property, including any residential and
7 non-residential property, beneficial ownership of
8 trusts, and co-ownership or fractional ownership,
9 while owning an ALOHA home in the district; provided
10 that an eligible buyer may own real property up to six
11 months after closing on the purchase of an ALOHA home;
12 provided further that an owner of an ALOHA home in the
13 process of selling the ALOHA home may own other real
14 property up to six months prior to closing on the sale
15 of the ALOHA home to an eligible buyer;

16 provided that the rules under this subsection shall not include
17 any requirements or limitations related to an individual's
18 income or any preferences to first-time home buyers. The rules
19 shall include strict enforcement of owner-occupancy, including a
20 prohibition on the renting or leasing of an ALOHA home to any
21 tenant or lessee, and may include requirements for the use of



1 face recognition, verification of the presence of owner-
2 occupants and prevention of access of all unauthorized persons
3 through retina scan for a minimum number of days per year, or
4 fingerprint scan technology.

5 (b) ALOHA homes within the urban redevelopment district
6 shall be priced to be affordable, as determined by the United
7 States Department of Housing and Urban Development, to an
8 individual or family whose income does not exceed eighty per
9 cent of the area median income, or \$300,000, whichever is less;
10 provided that the price shall be adjusted for inflation.

11 (c) The corporation shall establish waitlists for each
12 residential development for eligible buyers to determine the
13 order in which ALOHA homes shall be sold. Waitlist priorities
14 may include school, college, or university affiliation if the
15 residential property is a redeveloped school, college, or
16 university; proximity of an eligible buyer's existing residence
17 to an ALOHA home within the urban redevelopment district; and
18 other criteria based on the impact that the development has on
19 the eligible buyer.

20 (d) ALOHA homes within the urban redevelopment district
21 shall be sold only to other eligible buyers.



1 (e) An owner of an ALOHA home may sell the ALOHA home
2 after five or more years of owner-occupancy; provided that the
3 corporation shall have the right of first refusal to purchase
4 the ALOHA home at a price that is determined by the corporation
5 using the price at which the owner purchased the ALOHA home as
6 the cost basis, adjusted for inflation, and may include a
7 percentage of the appreciation in value of the unit. If the
8 corporation does not exercise its right to purchase the ALOHA
9 home, the ALOHA home may be sold by the owner to an eligible
10 buyer; provided that the corporation shall retain seventy-five
11 per cent of all profits from the sale net of closing and
12 financing costs, using the price at which the owner purchased
13 the ALOHA home as the cost basis. Upon the death of the owner
14 of an ALOHA home, the ALOHA home may be transferred to the
15 deceased's heir by devise or as any other real property under
16 existing law; provided that if the heir is not an eligible
17 buyer, the heir shall sell the ALOHA home to the corporation at
18 a price that is determined by the corporation using the price at
19 which the owner purchased the ALOHA home as the cost basis,
20 adjusted for inflation, and may include a percentage of the
21 appreciation in value of the unit.



1 (f) If an owner of an ALOHA home sells the ALOHA home
 2 before five years of owner-occupation, the corporation shall
 3 purchase the ALOHA home at a price that is determined by the
 4 corporation using the price at which the owner purchased the
 5 ALOHA home as the cost basis, adjusted for inflation.

6 (g) Any ALOHA home developed and sold under this subpart
 7 shall not be subject to sections 201H-47, 201H-49, 201H-50, and
 8 201H-51.

9 **§201H-G Use of public lands; acquisition of state lands.**

10 (a) If state lands under the control and management of other
 11 public agencies are required by the corporation for the purposes
 12 of this subpart, the agency having the control and management of
 13 those required lands, upon request by the corporation and with
 14 the approval of the governor, may convey or lease those lands to
 15 the corporation upon terms and conditions as may be agreed to by
 16 the parties.

17 (b) Notwithstanding the foregoing, no public lands shall
 18 be conveyed or leased to the corporation pursuant to this
 19 section if the conveyance or lease would impair any covenant
 20 between the State or any county or any department or board



1 thereof and the holders of bonds issued by the State or that
2 county, department, or board.

3 **§201H-H Acquisition of real property from a county.**

4 Notwithstanding the provision of any law or charter, any county,
5 by resolution of its local governing body, may, without public
6 auction, sealed bids, or public notice, sell, lease, grant, or
7 convey to the corporation any real property owned by it that the
8 corporation certifies to be necessary for the purposes of this
9 subpart. The sale, lease, grant, or conveyance shall be made
10 with or without consideration and upon terms and conditions as
11 may be agreed upon by the county and the corporation.

12 Certification shall be evidenced by a formal request from the
13 corporation. Before the sale, lease, grant, or conveyance may
14 be made to the corporation, a public hearing shall be held by
15 the local governing body to consider the same. Notice of the
16 hearing shall be published at least six days before the date set
17 for the hearing in the publication and in the manner as may be
18 designated by the local governing body.

19 **§201H-I Condemnation of real property.** The corporation,
20 upon making a finding that it is necessary to acquire any real
21 property for its immediate or future use for the purposes of



1 this subpart, may acquire the property, including property
 2 already devoted to a public use, by condemnation pursuant to
 3 chapter 101. The property shall not thereafter be taken for any
 4 other public use without the consent of the corporation. No
 5 award of compensation shall be increased by reason of any
 6 increase in the value of real property caused by the designation
 7 of the urban redevelopment district or plan adopted pursuant to
 8 a designation, or the actual or proposed acquisition, use, or
 9 disposition of any other real property by the corporation.

10 **§201H-J Relocation.** The corporation shall adopt rules
 11 pursuant to chapter 91 in compliance with the Uniform Relocation
 12 Assistance and Real Property Acquisition Act of 1970 and chapter
 13 111 to ensure the appropriate relocation within or outside the
 14 district of persons, families, businesses, or services displaced
 15 by governmental action within the urban redevelopment district.

16 **§201H-K Construction contracts.** (a) The corporation
 17 shall award construction contracts for ALOHA homes in conformity
 18 with section 201H-E(d), without regard to chapter 103D.

19 (b) The corporation shall award construction contracts for
 20 commercial projects without regard to chapter 103D.



1 **§201H-L Lease of projects.** Notwithstanding any law to the
2 contrary, the corporation, without recourse to public auction or
3 public notice for sealed bids, may lease for a term not
4 exceeding sixty-five years all or any portion of the real or
5 personal property constituting a commercial project to any
6 person, upon terms and conditions as may be approved by the
7 corporation; provided that all revenues generated from the lease
8 shall be used to support the purpose of this subpart pursuant to
9 section 201H-B.

10 **§201H-M Dedication for public facilities as condition to**
11 **development.** The corporation shall establish rules requiring
12 dedication for public facilities of land or facilities by
13 developers as a condition of developing real property within the
14 urban redevelopment district. Where state and county public
15 facilities dedication laws, ordinances, or rules differ, the
16 provision for greater dedication shall prevail.

17 **§201H-N ALOHA homes revolving fund.** There is created the
18 ALOHA homes revolving fund into which all receipts and revenues
19 of the corporation pursuant to this subpart shall be deposited.
20 Proceeds from the fund shall be used for the purposes of this
21 subpart.



1 **§201H-O Expenditures of ALOHA homes revolving fund under**
2 **the corporation exempt from appropriation and allotment. Except**
3 **as to administrative expenditures, and except as otherwise**
4 **provided by law, expenditures from the ALOHA homes revolving**
5 **fund administered by the corporation may be made by the**
6 **corporation without appropriation or allotment of the**
7 **legislature; provided that no expenditure shall be made from and**
8 **no obligation shall be incurred against the ALOHA homes**
9 **revolving fund in excess of the amount standing to the credit of**
10 **the fund or for any purpose for which the fund may not lawfully**
11 **be expended. Nothing in sections 37-31 to 37-41 shall require**
12 **the proceeds of the ALOHA homes revolving fund administered by**
13 **the corporation to be reappropriated annually.**

14 **§201H-P Assistance by state and county agencies. Any**
15 **state or county agency may render services for the purposes of**
16 **this subpart upon request of the corporation.**

17 **§201H-Q Court proceedings; preferences; venue. (a) Any**
18 **action or proceeding to which the corporation, the State, or the**
19 **county may be a party, in which any question arises as to the**
20 **validity of this subpart, shall be brought in the circuit court**
21 **of the circuit where the case or controversy arises, and shall**



1 be heard and determined in preference to all other civil cases
2 pending therein except election cases, irrespective of position
3 on the calendar.

4 (b) Upon application of counsel to the corporation, the
5 same preference shall be granted in any action or proceeding
6 questioning the validity of this subpart in which the
7 corporation may be allowed to intervene.

8 (c) Notwithstanding any provision of law to the contrary,
9 declaratory relief may be obtained for the action.

10 (d) Any party aggrieved by the decision of the circuit
11 court may appeal in accordance with part I of chapter 641 and
12 the appeal shall be given priority.

13 **§201H-R Issuance of bonds.** The director of finance, from
14 time to time, may issue general obligation bonds pursuant to
15 chapter 39 in amounts as may be authorized by the legislature,
16 for the purposes of this subpart.

17 **§201H-S Violations and penalty.** (a) The corporation may
18 set, charge, and collect reasonable fines for violation of this
19 subpart or any rule adopted pursuant to chapter 91.

20 Notwithstanding section 201H-E(c), any person violating any rule
21 adopted pursuant to chapter 91, for which violation a penalty is



1 not otherwise provided, shall be fined not more than \$500 a day
2 and shall be liable for administrative costs incurred by the
3 corporation.

4 (b) The corporation may maintain an action for an
5 injunction to restrain any violation of this subpart and may
6 take any other lawful action to prevent or remedy any violation.

7 (c) Notwithstanding section 201H-E(c), any person
8 violating this subpart shall, upon conviction, be punished by a
9 fine not exceeding \$1,000 or by imprisonment not exceeding
10 thirty days, or both. The continuance of a violation after
11 conviction shall be deemed a new offense for each day of the
12 continuance.

13 **§201H-T Additional powers.** The powers conferred upon the
14 corporation by this subpart shall be in addition and
15 supplemental to the powers conferred by any other law, and
16 nothing in this subpart shall be construed as limiting any
17 powers, rights, privileges, or immunities so conferred.

18 **§201H-U State lands no longer needed.** State lands that
19 are no longer needed for affordable residential leasehold units
20 by the Hawaii housing finance and development corporation shall
21 be returned to the previous owner of those lands.



1 **§201H-V Rules.** The corporation may adopt rules, pursuant
2 to chapter 91, necessary for the purposes of this subpart.

3 C. Leasehold Condominiums on State Lands

4 **§201H-W Leasehold condominiums on state lands.** (a) The
5 corporation may sell leasehold units in condominiums organized
6 pursuant to chapter 514B and developed under this subpart on
7 state land to a "qualified resident" as defined in section
8 201H-32.

9 (b) The term of the lease may be for ninety-nine years,
10 and the corporation may extend or modify the fixed rental period
11 of the lease or extend the term of the lease.

12 (c) The sale of leasehold units shall be subject to
13 sections 201H-47, 201H-49, and 201H-50, except for units sold at
14 fair market value.

15 (d) State land set aside by the governor to the
16 corporation and lands leased to the corporation by any
17 department or agency of the State for a condominium described in
18 this section shall be exempt from the definition of "public
19 land" under section 171-2, except for the provision in section
20 171-2(6) that subjects corporation lands to the accounting for



1 all receipts for lands subject to section 5(f) of the Admission
2 Act.

3 (e) The powers conferred upon the corporation by this
4 section shall be in addition and supplemental to the powers
5 conferred by any other law, and nothing in this section shall be
6 construed as limiting any powers, rights, privileges, or
7 immunities so conferred."

8 SECTION 3. Chapter 237, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§237- Exemption of sale of leasehold interest for
12 ALOHA home units. In addition to the amounts exempt under
13 section 237-24, this chapter shall not apply to amounts received
14 from the sale of a leasehold interest in an ALOHA homes unit
15 under chapter 201H, subpart B."

16 SECTION 4. Section 171-2, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§171-2 Definition of public lands. "Public lands" means
19 all lands or interest therein in the State classed as government
20 or crown lands previous to August 15, 1895, or acquired or
21 reserved by the government upon or subsequent to that date by



1 purchase, exchange, escheat, or the exercise of the right of
 2 eminent domain, or in any other manner; including lands accreted
 3 after May 20, 2003, and not otherwise awarded, submerged lands,
 4 and lands beneath tidal waters that are suitable for
 5 reclamation, together with reclaimed lands that have been given
 6 the status of public lands under this chapter, except:

- 7 (1) Lands designated in section 203 of the Hawaiian Homes
 8 Commission Act, 1920, as amended;
- 9 (2) Lands set aside pursuant to law for the use of the
 10 United States;
- 11 (3) Lands being used for roads and streets;
- 12 (4) Lands to which the United States relinquished the
 13 absolute fee and ownership under section 91 of the
 14 Hawaiian Organic Act prior to the admission of Hawaii
 15 as a state of the United States unless subsequently
 16 placed under the control of the board of land and
 17 natural resources and given the status of public lands
 18 in accordance with the state constitution, the
 19 Hawaiian Homes Commission Act, 1920, as amended, or
 20 other laws;
- 21 (5) Lands to which the University of Hawaii holds title;



1 (6) Lands that are set aside by the governor to the Hawaii
2 housing finance and development corporation; lands
3 leased to the Hawaii housing finance and development
4 corporation by any department or agency of the State;
5 or lands to which the Hawaii housing finance and
6 development corporation in its corporate capacity
7 holds title; provided that lands described in this
8 paragraph shall be considered "public lands" for the
9 purpose of accounting for all receipts from lands
10 described in section 5(f) of the Admission Act for the
11 prior fiscal year, pursuant to section 5 of Act 178,
12 Session Laws of Hawaii 2006; provided further that
13 payment of receipts pursuant to this paragraph may be
14 made in a form of remuneration or consideration other
15 than cash;

16 (7) Lands to which the Hawaii community development
17 authority in its corporate capacity holds title;

18 (8) Lands to which the department of agriculture holds
19 title by way of foreclosure, voluntary surrender, or
20 otherwise, to recover moneys loaned or to recover
21 debts otherwise owed the department under chapter 167;



- 1 (9) Lands that are set aside by the governor to the Aloha
- 2 Tower development corporation; lands leased to the
- 3 Aloha Tower development corporation by any department
- 4 or agency of the State; or lands to which the Aloha
- 5 Tower development corporation holds title in its
- 6 corporate capacity;
- 7 (10) Lands that are set aside by the governor to the
- 8 agribusiness development corporation; lands leased to
- 9 the agribusiness development corporation by any
- 10 department or agency of the State; or lands to which
- 11 the agribusiness development corporation in its
- 12 corporate capacity holds title;
- 13 (11) Lands to which the Hawaii technology development
- 14 corporation in its corporate capacity holds title; and
- 15 (12) Lands to which the department of education holds
- 16 title;
- 17 provided that, except as otherwise limited under federal law and
- 18 except for state land used as an airport as defined in section
- 19 262-1, public lands shall include the air rights over any
- 20 portion of state land upon which a county mass transit project
- 21 is developed after July 11, 2005."



1 SECTION 5. Chapter 201H, Hawaii Revised Statutes, is
2 amended by designating sections 201H-31 to 201H-70 as subpart A
3 and inserting a title before section 201H-31 to read as follows:

4 "A. General Provisions"

5 SECTION 6. Section 302A-1603, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) The following shall be exempt from this section:

8 (1) Any form of housing permanently excluding school-aged
9 children, with the necessary covenants or declarations
10 of restrictions recorded on the property;

11 (2) Any form of housing that is or will be paying the
12 transient accommodations tax under chapter 237D;

13 (3) All nonresidential development; [and]

14 (4) Any development with an executed education
15 contribution agreement or other like document with the
16 department for the contribution of school sites or
17 payment of fees for school land or school
18 construction[-]; and

19 (5) Any form of development by the Hawaii housing finance
20 and development corporation pursuant to chapter 201H,
21 part II, subpart B."



1 SECTION 7. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$ or so much
 3 thereof as may be necessary for fiscal year 2019-2020 to be
 4 deposited into the ALOHA homes revolving fund established
 5 pursuant to section 201H-N, Hawaii Revised Statutes.

6 SECTION 8. There is appropriated out of the ALOHA homes
 7 revolving fund established pursuant to section 201H-N, Hawaii
 8 Revised Statutes, the sum of \$ or so much thereof as may
 9 be necessary for fiscal year 2019-2020 for the purposes for
 10 which the revolving fund is established.

11 The sum appropriated shall be expended by the Hawaii
 12 housing finance and development corporation for the purposes of
 13 this Act.

14 SECTION 9. In codifying the new sections added by section
 15 2 of this Act, the revisor of statutes shall substitute
 16 appropriate section numbers for the letters used in designating
 17 the new sections in this Act.

18 SECTION 10. Statutory material to be repealed is bracketed
 19 and stricken. New statutory material is underscored.

20 SECTION 11. This Act shall take effect on July 1, 2050.



S.B. NO. ¹ S.D. 2

Report Title:

ALOHA Homes Program; Housing; HHFDC; Urban Redevelopment District; Transit-oriented Development; Leasehold Condominiums on Lands Controlled by the State; Appropriation

Description:

Establishes the ALOHA homes program under the Hawaii Housing Finance and Development Corporation (HHFDC) to facilitate the development of low-cost homes for sale to Hawaii residents on state-owned and county-owned land near rail stations of the Honolulu rail transit system, to be known as the urban redevelopment district. Establishes guidelines within the urban redevelopment district and provisions related to the sale of leasehold interest of ALOHA homes. Exempts lands to which HHFDC holds title and land set aside or leased to HHFDC from the definition of public lands in section 171-2, HRS, except for purposes of accounting for receipts from ceded lands. Establishes and appropriates funds into and out of the ALOHA homes revolving fund. Authorizes HHFDC to sell the leasehold interest in residential condominium units located on state lands for lease terms of 99 years. Effective 7/1/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



ASSEMBLY BILL

No. 387

**Introduced by Assembly Member Lee
(Coauthor: Assembly Member Wicks)**

February 2, 2021

An act relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 387, as introduced, Lee. Social Housing Act of 2021.

Existing law establishes the Department of Housing and Community Development and sets forth its powers and duties. Existing law establishes various programs providing assistance for, among other things, emergency housing, multifamily housing, farmworker housing, homeownership for very low and low-income households, and downpayment assistance for first-time homebuyers.

This bill would declare the intent of the Legislature to subsequently amend this bill to include provisions that would enact the Social Housing Act of 2021 to establish the California Housing Authority for the purpose of developing mixed-income rental and limited equity homeownership housing and mixed-use developments to address the shortage of affordable homes for low and moderate-income households.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to subsequently
- 2 amend this measure to include provisions that would enact the
- 3 Social Housing Act of 2021 to establish the California Housing

AB 387

— 2 —

- 1 Authority for the purpose of developing mixed-income rental and
- 2 limited equity homeownership housing and mixed-use
- 3 developments to address the shortage of affordable homes for low
- 4 and moderate-income households.

O

RESOLUTION NO. ##,###-N.S.

RECOGNIZING HOUSING AS HUMAN RIGHT, REFERRING CITY MANAGER TO STUDY FINANCIAL FEASIBILITY OF MUNICIPAL HOUSING DEVELOPMENT PILOT PROGRAM TO ADMINISTER AUTOMATIC STABILIZERS FOR GUARANTEEING ADEQUATE HOUSING

WHEREAS, the United Nations has recognized housing as a human right in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights; and,

WHEREAS, the right to adequate housing includes freedoms such as protection against forced evictions and arbitrary destruction of housing; right to privacy; non-discriminatory choice of residence, and freedom of movement; and,

WHEREAS, the right to adequate housing includes entitlements such as security of tenure, restitution, equal and non-discriminatory access, and civic participation; and,

WHEREAS, the City of Berkeley has failed to affirm these freedoms and entitlements for its homeless residents, including 813 unsheltered identified in the 2019 Alameda County point-in-time count; and,

WHEREAS, the state of California and its local and regional governments have failed to affirm these freedoms and entitlements for at least 53% of renters who endure excessive cost-burdens, defined as paying over 30% of income for housing, according to the 2017 American Community Survey; and,

WHEREAS, cities around the world including Vienna and Singapore deliver better housing security and quality of life outcomes for their citizens with robust public housing development programs that reinvest revenues from mixed-income housing and real assets to fund operational costs and capital projects; and,

WHEREAS, histories of Jim Crow segregation endure in racial discrimination in mortgage credit and exclusionary land-use policies maintain disproportionate cost burdens and housing insecurity on Black people and low-income communities of color in the United States; and,

WHEREAS, the Berkeley City Council authorized a Missing Middle Report in 2019 on unanimous consent to study reforms to its land-use policies to enable more affordable times of housing construction, transit-oriented development, and racial and economic inclusion; and,

WHEREAS, the Berkeley City Council authorized a Local Preference policy for affordable housing when it passed the Adeline Corridor Specific Plan in 2020 to enable reparative housing security for low-income communities of color bearing the brunt of displacement and gentrification in Berkeley; and,

WHEREAS, the voters of the City of Berkeley authorized large increases in local funding for affordable housing in 2018 with the overwhelming passage of Measures O and P; and,

WHEREAS, a 2017 Analysis of City-Owned Property for Potential for Housing Development by Berkeley's Health, Housing and Community Services Department identified several publicly owned parcels that would require zoning changes and further study for affordable housing production;

NOW THEREFORE, BE IT RESOLVED, that the City of Berkeley recognizes adequate housing as a human right, with recognition of attendant freedoms and entitlements as enumerated by the United Nations;

BE IT FURTHER RESOLVED, that the Berkeley City Council refers the City Manager to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators;

BE IT FURTHER RESOLVED, that the pilot program's feasibility study shall include, but not be limited to,

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire real property, develop, and/or maintain mixed-income and permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission ([MTC](#)) and Association of Bay Area Governments ([ABAG](#)), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.



ACTION CALENDAR

DATE: 2/23/21

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin, Mayor Jesse Arreguín (co-sponsor),
Councilmember Sophie Hahn (co-sponsor)

Subject: Resolution Recognizing Housing as Human Right; Referring City Manager to Study Financial Feasibility of Municipal Housing Development Pilot Program with Cooperative, Nonprofit, and Public Ownership Models, Administered as Automatic Stabilizers to Guarantee Adequate Housing.

RECOMMENDATION

Refer the City Manager's office to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators. Pilot program feasibility study shall include, but not be limited to:

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire, develop, and/or maintain permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community

reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.

BACKGROUND

Guaranteeing Adequate Housing: Global and Local Comparison

International law has recognized a right to adequate housing since the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights, establishing freedoms and entitlements that include security of tenure, privacy, affordability, freedom of movement and non-discriminatory access.¹ By definition, the City of Berkeley has not affirmed this right for at least 1,000 homeless residents, with 813 unsheltered according to the 2019 Homeless Point-in-Time Count in Alameda County.² To obtain secure homeownership, the city's December 2020 median home price of \$1.39 million would require an income over three times as high as Berkeley's 2018 median household income of \$80,000.³ Meanwhile, the state of California leads the nation in its share of the homeless population⁴; over half the state's renters and a third of its homeowners are excessively cost-burdened, paying over 30% of their income for housing; and more than two-thirds of Californians facing excessive housing costs are people of color.⁵ According to the California Budget & Policy Center, "Poor housing quality, living in a low-income neighborhood, overcrowding, moving frequently, and homelessness are all associated with adverse health outcomes."⁶

In urban areas throughout the world, other nations with lower rates of homelessness and housing insecurity provide adequate housing for their citizens through various policies that address housing as public infrastructure. Housing systems are administered in varying degrees of "decommodification,"⁷ ensuring a minimum standard of living through the welfare state above what individuals can obtain through the private market. Different governments approach decommodification of housing through

¹ Office of the United Nations High Commissioner for Human Rights. (2009). *Fact Sheet No. 21: The Right to Adequate Housing. (Rev. 1)*. United Nations: Geneva. Retrieved from https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf

² https://everyonehome.org/wp-content/uploads/2019/07/ExecutiveSummary_Alameda2019-1.pdf

³ <https://www.zillow.com/berkeley-ca/home-values/>

⁴ Passy, J. (2019). Nearly half of the U.S.'s homeless population live in one state: California. *MarketWatch*. Retrieved from <https://www.marketwatch.com/story/this-state-is-home-to-nearly-half-of-all-people-living-on-the-streets-in-the-us-2019-09-18#>

⁵ Kimberlin, S. (2017). Californians in All Parts of the State Pay More Than They Can Afford for Housing. *California Budget & Policy Center*. Retrieved from <https://calbudgetcenter.org/resources/californians-parts-state-pay-can-afford-housing/>

⁶ Ramos-Yamamoto, A. (2019). Advancing Health Equity: How State Policymakers Can Increase Opportunities for All Californians to Be Healthy. *California Budget & Policy Center*. Retrieved from <https://calbudgetcenter.org/blog/advancing-health-equity-how-state-policymakers-can-increase-opportunities-for-all-californians-to-be-healthy/>

⁷ Esping-Andersen, G. (1990). *The Three Worlds of Welfare Capitalism*. Princeton, NJ: Princeton University Press. p. 21-23.

strategies for subsidizing the supply channel by providing low-cost housing, or the demand channel by supporting consumer purchasing power.

In two case studies, the cities of Vienna and Singapore own and operate public housing development corporations that retain some amount of land title in the common trust in order to stabilize the housing market—either by restricting ownership to leases, or encouraging low-cost rentals and developing on public land holdings. Both also retain a “reserve supply” of land and/or development rights to stabilize housing affordability through recessionary demand shocks. These cities are able to provide housing to any citizen at an affordable cost regardless of their income, effectively reinvesting revenues from higher-income households to subsidize housing for lower incomes. In Tokyo, while housing is more commodified, Japanese federal land-use policy treats housing essentially as a non-durable consumer good, prioritizing its utility as shelter over its capacity to increase financial wealth.⁸

Vienna and Singapore rank 1st and 25th on the 2019 Mercer Quality of life ranking, respectively, above any city in the United States. Vienna has held the top position for the past ten years.⁹

The United States has tended toward the extreme opposite end in the spectrum of housing commodification. Modern economic policy and property rights have treated housing primarily as means to a guarantee for growing financial asset wealth and enforce a white supremacist caste system. Housing is commodified to an extreme degree that is incompatible with material needs of the general population. Subsidies for both supply and demand channels have been historically insufficient while support for American asset wealth primarily in white communities has been more robust and resilient. This has widened the racial wealth gap between white and Black households, and ultimately proved incompatible with universal housing security.

The Great Recession of 2008 effected an abjectly cruel transfer of wealth from lower-income Black homeowners¹⁰ targeted with predatory subprime loans to private equity firms¹¹ buying up large portfolios of “distressed” properties before the economy recovered. This longstanding pattern of usury and community displacement further has further excluded people of color from the fruits of economic recovery and deepens the racial wealth gap. We risk repeating this process in the current COVID-19 depression, as renters and low-income homeowners face an unprecedented homelessness crisis

⁸ Karlinsky, S. et al. (2020). From Copenhagen to Tokyo: Learning from International Housing Delivery Systems. *SPUR Regional Strategy Briefing Paper*. Retrieved from <https://www.spur.org/publications/white-paper/2020-08-06/copenhagen-tokyo>.

⁹ Mercer. (2019). Quality of life city ranking. Retrieved from <https://mobilityexchange.mercer.com/insights/quality-of-living-rankings>

¹⁰ White, G.B. (2015). The Recession’s Racial Slant. *The Atlantic*. Retrieved from <https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/>

¹¹ Warren, E. & Fife, C. (2020). Families see a looming catastrophe. Private equity firms see dollar signs. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/opinions/2020/08/06/nation-is-facing-housing-crisis-private-equity-firms-just-see-dollar-signs/>

due to job losses during the pandemic, while relatively affluent cities like Berkeley see median home prices continue to rise.

Local, state and federal governments alike have made routine practice of devaluing or outright destroying black asset wealth for the benefit of more affluent, exclusively white communities, most visibly through usurious redlining and destructive “urban renewal.”¹² Fundamentally, the government has devoted more resources in absolute terms to protecting the right to capital gains of property owners, at the expense of adequate housing and any right to basic living standards for Black people. After a brief wartime period in which public housing was conceived to sustain middle-class households U.S. public housing developments in the mid-20th century were notoriously racially segregated poverty traps located far from public services and economic opportunity, starved of operational funds and “destined to fail.”¹³

The inequities of our current housing crisis are rooted in histories of Jim Crow segregation, mortgage guarantees of the New Deal era, and deflationary policy of the late 1970s. Where neighborhoods were once segregated explicitly by racial covenants and *de jure* statutes, government mortgage guarantees sublimated this segregation into self-reinforcing actuarial assessments promulgated by the Home Owners Loan Corporation (HOLC) and Federal Housing Administration (FHA), established under President Franklin Roosevelt. This practice known as “redlining” infamously denied mortgage credit to primarily Black and Latinx neighborhoods throughout the country, giving more affluent white neighborhoods exclusive access to risk-free mortgage credit while trapping communities of color in poverty. According to UC Berkeley’s Urban Displacement Project, neighborhoods that were once redlined are now at greater risk of gentrification and displacement.¹⁴

The United States and other anglophone countries further commodified housing in order to provide welfare through asset ownership to compensate for stagnation in real purchasing power.¹⁵ In response to high inflation of the 1970s, the Federal Reserve drastically raised interest rates beginning in 1978, triggering a period of deflation that boosted asset prices while suppressing real wages and economic growth. With accompanying deregulation of the financial sector, housing became “financialized” as a special asset class attracting a rush of speculative capital, because it retained the imprimatur of government mortgage guarantees while enjoying fewer capital controls, practically guaranteeing that household asset wealth would outpace low inflation and stagnating wages.¹⁶ A growing body of research strongly suggests that financialization

¹² Baradaran, M. (2017). *The Color of Money: Black Banks and the Racial Wealth Gap*. Cambridge, MA: Harvard University Press. p. 141.

¹³ Perry-Brown, N. (2020). *How public housing was destined to fail*. Greater Greater Washington. Retrieved from <https://ggwash.org/view/78164/how-public-housing-was-destined-to-fail>

¹⁴ The Legacy of Redlining. (2018). Retrieved from <https://www.urbandisplacement.org/redlining>

¹⁵ Adkins, L. et al. (2019). Class in the 21st century: Asset inflation and the new logic of inequality. *Environment and Planning A: Economy and Space*. doi.org/10.1177/0308518X19873673

¹⁶ Feygin, Y. (2021). The Deflationary Bloc. *Phenomenal World*. Retrieved from <https://phenomenalworld.org/analysis/deflation-inflation>.

of housing has intensified business cycle volatility and deepened periodic recessions, as “consumption became more correlated with housing wealth.”¹⁷

Berkeley pioneered other methods of guaranteeing housing price inflation: single-family zoning was first established in the Elmwood and Claremont neighborhoods to sustain real estate values and exclude racial minorities. The Mason-McDuffie Company developed residential neighborhoods in Berkeley with racial covenants in property deeds preventing lease or sale to anyone of “African or Mongolian descent,” and lobbied for restrictive zoning in 1916 to protect against “disastrous effects of uncontrolled development”¹⁸—the implied “disastrous effects” being stable prices and an influx of Black and Chinese residents.

Restrictive zoning reduces multifamily development, constrains supply and enforces a high price floor on dwelling units in high-cost land¹⁹. A 2015 study by the nonpartisan Legislative Analyst Office found that growth control policies increased home prices by 3-5%.²⁰ Correspondingly, emerging research from UC Berkeley finds evidence that new market-rate development in San Francisco lowered rents by 2% on parcels within 100 meters and reduced displacement risk for renters in that area by 17%,²¹ while a 2016 study by UC Berkeley’s Urban Displacement Project found that affordable housing has double the effect of mitigating displacement as market-rate housing.²² According to a 2001 study on homelessness in California, “rather modest improvements in the affordability of rental housing or its availability can substantially reduce the incidence of homelessness in the United States.”²³

Exclusionary zoning effectively limits where and to what extent these effects can occur, maintaining the spatial segregation of redlining after the latter practice was outlawed by the 1968 Fair Housing Act. In a study of 197 metropolitan areas in the United States, UC Merced political scientist Jessica Trounstein has found that restrictive land use policies predicted sustained racial segregation in cities between 1970 and 2006, while larger, sustained white minorities were predictive of cities’ resistance to new residential

¹⁷ Ryan-Collins, J., et al. (2017). *Rethinking the Economics of Land and Housing*. London, UK: New Economics Foundation.

¹⁸ Lory, Maya Tulip. (2013). A History of Racial Segregation, 1878–1960. *The Concord Review*. Retrieved from <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

¹⁹ Murray, C. & Schuetz, J. (2019). Is California’s Apartment Market Broken? The Relationship Between Zoning, Rents, and Multifamily Development. *UC Berkeley Turner Center for Housing Innovation*. (2019).

²⁰ Legislative Analyst Office. (2015). California’s High Housing Costs: Causes and Consequences. Retrieved from <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>

²¹ Pennington, K. (2021). Does Building New Housing Cause Displacement?: The Supply and Demand Effects of Construction in San Francisco. *Working Paper*. Retrieved from https://www.dropbox.com/s/oplls6utgf7z6ih/Pennington_JMP.pdf?dl=0.

²² Zuk, M. & Chapple, K. (2016). Housing Production, Filtering and Displacement: Untangling the Relationships. *Institute of Governmental Studies Research Brief*. Berkeley, CA: UC Berkeley IGS. Retrieved from https://www.urbandisplacement.org/sites/default/files/images/udp_research_brief_052316.pdf

²³ Quigley, J.M. (2001). Homeless in America, Homeless in California. *The Review of Economics and Statistics*. 83(1): 37–51.

development.²⁴ Research from UC Berkeley's Othring and Belonging Institute finds that single-family zoning in the Bay Area is strongly correlated with high-resource, high-opportunity, and highly segregated communities.²⁵ Karen Chapple, Director of UC Berkeley's Urban Displacement Project, stated in a February 25, 2019 letter to the Berkeley City Council, "the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today's exclusionary areas in the East Bay... Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today." These inequitable distributions of access to housing and asset appreciation has historically perpetuated and remains a primary factor in country's the racial wealth gap.²⁶

The highly commodified political economy in the United States is enforced by a doctrine of strong property rights for protecting capital gains from asset inflation (colloquially referred to as "financialization" or "commodification") over rights to material well-being, perpetuating a permanent affordability crisis for most workers who did not already own their homes. This fundamental conflict of moral values and economic rights came into stark display in early 2020, when the group Moms 4 Housing occupied a vacant home in West Oakland owned by Wedgewood Inc., a private equity firm that flipped houses nationwide. In the early hours of January 14, 2020, Alameda County sheriff's deputies enforced an eviction order with guns and armored cars on display, arresting four members of the group who had previously been homeless or housing insecure. On January 20, Oakland Mayor Libby Schaaf and Governor Newsom announced a deal with Wedgewood to sell the house to the Oakland Community Land Trust, and offer first right of refusal to the land trust for its property portfolio in Oakland for permanently affordable housing.²⁷

This political value statement, backed by a real transfer of wealth and rights of secure tenure, does not need to be an *ad hoc* bartering between the sweat equity of community organizers, the bully pulpit of elected officials, and the real physical danger of tactical civil disobedience. These values can instead be operationalized as part of the baseline administration of public services. In response to the Moms 4 Housing success, the state legislature passed SB-1079 by Senator Nancy Skinner (D-Berkeley) in September of 2020, authorizing fines of from \$2,000 to \$5,000 per day on buyers of foreclosed homes left vacant for over 90 days; banning bundled sales of foreclosed houses; and giving

²⁴ Trounstein, J. (2020). *The Geography of Inequality: How Land Use Regulation Produces Segregation*. *American Political Science Review*. Cambridge: Cambridge University Press.

²⁵ Menendian, S., et al. (2020). *Single Family Zoning in the Bay Area: Characteristics of Exclusionary Communities*. *UC Berkeley Othring & Belonging Institute*. Retrieved from <https://belonging.berkeley.edu/single-family-zoning-san-francisco-bay-area>

²⁶ Darity Jr, W. et al. (2018). *What We Get Wrong About the Racial Wealth Gap*. *Samuel DuBois Cook Center on Social Equity*. Durham, NC: Duke University. Retrieved from <https://socialequity.duke.edu/wp-content/uploads/2020/01/what-we-get-wrong.pdf>

²⁷ La Ganga, M. L. (2020). *Evicted Oakland moms will get their house back after a deal with Redondo Beach company*. *Los Angeles Times*. Retrieved from <https://www.latimes.com/california/story/2020-01-20/homeless-moms-4-housing-oakland-wedgewood-properties-deal>

tenants, nonprofits, and community land trusts 45 days to match the final highest bid for the property.

Aligning public financing with more inclusive land-use regulations can offer a path to automating these sorts of progressive, reparative distributions of material well-being and housing security at a broader scale.

Automatic Stabilizers

Economists have proposed “automatic stabilizers” to respond to recessions with increased urgency since Obama Administration’s stimulus efforts following the Great Recession were hamstrung by partisan gridlock in Congress. Federal Reserve economist Claudia Sahm developed the “Sahm rule” for defining the onset of a recession with a specific threshold of sustained unemployment, and a proposal in which this rule could trigger automatic stimulus payments “to broadly support aggregate demand in a recession.”²⁸ In her testimony on January 19, 2021 at a confirmation hearing for her appointment to Treasury Secretary, former Federal Reserve chair Janet Yellen stated: “Our current system needs both updating and expansion... Designing and implementing a modern and effective system of automatic stabilizers is an important step to take now, so that we can minimize the negative impacts of any future recessions.”²⁹

Issuing stimulus payments automatically and universally to households rather than negotiating periodically in partisan politics could prevent widespread poverty among the least fortunate and also blunt a recession’s severity by sustaining consumer demand—stabilizing both material conditions for lower-income households, and consumption writ large. Analogous benchmarks can be operationalized to “stabilize” housing security in the city throughout business cycles and state planning certification periods. For example, urban planner Alain Bertaud has proposed automating updates to land-use policy as a function of land values to programmatically enforce widespread housing affordability.³⁰

President Joseph R. Biden’s 2020 campaign platform included massive increases to federal funding for public housing and the Section 8 housing voucher program.³¹ If the new presidential administration can increase housing subsidies through both supply and demand channels to more closely meet present and future needs, the City of Berkeley

²⁸ Sahm, C. (2019). Direct Stimulus Payments to Individuals. *The Hamilton Project*. Retrieved from https://www.hamiltonproject.org/assets/files/Sahm_web_20190506.pdf

²⁹ Yellen, J. (2021). Hearing to Consider the Anticipated Nomination of the Honorable Janet L. Yellen to Secretary of the Treasury. *U.S. Senate Committee on Finance*. Retrieved from <https://www.finance.senate.gov/imo/media/doc/Dr%20Janet%20Yellen%20Senate%20Finance%20Committee%20QFRs%2001%2021%202021.pdf>

³⁰ Bertaud, A. (2018). *Order Without Design: How Markets Shape Cities*. Cambridge, MA: The MIT Press.

³¹ Biden, J. (2020). The Biden Plan for Investing in our Communities Through Housing. Retrieved from <https://joebiden.com/housing/>

would have more resources to proactively ensure adequate, stable, and non-discriminatory housing is further guaranteed.

Municipal Housing Development

Mixed-income municipal housing development has distinct global variants, and is already currently being explored in the United States. In California, AB-387 also known as “the Social Housing Act of 2021” by Assemblymembers Lee (D-San Jose) and Wicks (D-Oakland), sets forth the intent to “establish the California Housing Authority for the purpose of developing mixed-income rental and limited equity homeownership housing and mixed-use developments to address the shortage of affordable homes for low and moderate-income households.” (See Attachment 3.) Importantly, state revenue bonds for infrastructure projects do not require voter approval.

The state legislature of Hawaii is considering a state-led housing development proposal known as ALOHA Homes, modeled after Singapore's Housing and Development Board (HDB). SB1 (2019) by State Senator Stanley Chang (D-Oahu) would establish a program within the state's housing finance agency to use existing and newly-acquired state lands near public transit to develop high-density housing. (See Attachment 2.) The state would sell housing units at-cost to residents on 99-year leases. The agency would establish a dedicated revolving fund to provide low-cost loans to support long-term affordability, property maintenance and development. By leasing public land for development while retaining title in the public trust, public agencies can ensure that a proportionate degree of real estate value increased by public investment can be recaptured for the public benefit.

In Singapore, the resale market for 99-year home leases are regulated to ensure long-term affordability with assistance to help households exchange their leasehold equity for larger or smaller units throughout the lease term to adapt to changing needs as family members age. Over 80% of Singaporeans live in HDB housing developments.

In Austria, over 60% of Vienna's residents live in social housing, consisting of roughly 200,000 municipally-owned housing units and 220,000 nonprofit-owned units. For non-citizens, a minimum of five years' residency is required to apply for a social housing unit, and subsidized units must be for a household's primary residence. Public investments for construction, property management, and preservation of the social housing stock are subsidized by a federal income tax and the state's general fund, as well as a revolving loan fund managed by the Vienna Housing Fund. The Vienna Housing Fund operates as a community-owned nonprofit land bank, established by Social Democrats in the 1920s with large investments in public land in response to a housing shortage following the First World War. The self-sustaining nonprofit entity acquires existing housing or develops new projects with the aim of long-term affordability.

The Vienna Housing Fund is a major entity developing thousands of new housing units every year, while buying and selling real property on the open market. It maintains a

two-year reserve of land to stabilize its property portfolio throughout real estate market cycles. The Vienna Housing Fund collaborates with the municipal government and nonprofit housing developers to provide affordable housing on public land via low-interest loans for new developments³², with loan payments reinvested into a revolving loan fund for future loans and subsidies.

Vienna also indirectly subsidizes private development by arranging land transfers and low-interest loans with private firms through a competitive bidding process, in which a jury panel evaluates applicants' projects based on criteria for design, sustainability, and affordability. The city rents a portion of the units at affordable rents to lower-income residents, but means-testing is only applied at the initial move-in. Effectively, Vienna's social housing program subsidizes affordable affordable housing through the supply channel rather than the demand channel (i.e. by subsidizing tenants themselves). Unlike Singapore, the city of Vienna's land-use planning promotes rentals over private homeownership, but similarly favors community longevity, recreational facilities, and supportive services. In 2016, the Social Democratic Party of Austria introduced the "wohnbauoffensive"³³—an initiative to streamline construction and permitting to increase housing production by 30%.

There are also examples in present-day California of revolving funds for community land reinvestment that sustain communities across the state. In Palm Springs, the Agua Caliente Band of Cahuilla Indians own and lease land to nearly 20,000 people and businesses in a non-contiguous checkerboard arrangement, with up to 99-year leases for residential development.³⁴ At a larger scale, University of California and California State University systems develop and manage large portfolios of student housing across the state. The universities own tens of thousands of rental beds and dwelling units in urban, suburban and rural jurisdictions. Each UC campus prepares and implements a capital management plan to develop property for rental housing—plans which include revolving reinvestments in their existing portfolio.³⁵ In Berkeley and neighboring jurisdictions, BART is planning for housing development on BART property by leasing land to private and nonprofit developers, using the land-lease model as leverage to achieve the agency's goal of 35% Below Market-Rate housing systemwide.³⁶ The Berkeley Unified School District is also exploring the potential to develop workforce housing on its properties.³⁷

³² Wohnpartner Wien. (2019). Vienna Social Housing – Tools of Success. Retrieved from

https://socialhousing.wien/fileadmin/user_upload/20190325_Einlagebla__tter_Gesamt_Englisch.pdf

³³ Stadt Wien Press service. (2016). "More, faster, cheaper and sustainable" – the City of Vienna is launching an additional housing offensive. Retrieved from <https://www.wien.gv.at/presse/2016/02/17/mehr-schneller-preiswert-und-nachhaltig-stadt-wien-startet-eine-zusaetzliche-wohnbau-offensive>

³⁴ Murphy, R. (2016). Half of Palm Springs sits on rented land. What happens if the leases end? *Desert Sun*. Retrieved from <https://www.desertsun.com/story/money/real-estate/2016/09/22/palm-springs-agua-caliente-land-lease/87944598/>.

³⁵ University of California. (2019). Capital Financial Plan 2019-25. Retrieved from <https://ucop.edu/capital-planning/files/capital/201925/2019-25-cfp.pdf>

³⁶ BART Board of Directors. (2016). Transit-Oriented Development Performance Measures and Targets. Retrieved from https://www.bart.gov/sites/default/files/docs/B-%20TOD%20Performance%20Targets%202040%20Adopted%2012-1-16_0.pdf

In 2017, an analysis of city-owned property in Berkeley by the Department of Health, Housing and Community Services found several sites such as the Elmwood Parking Lot, which “would need to be rezoned to support multifamily housing development at a large enough scale to make affordable housing feasible.”³⁸ Other properties identified would require zoning changes and further study at a minimum.

RATIONALE FOR RECOMMENDATION

Public housing development corporations in California could make both short-term and permanent impacts on housing affordability, construction sector employment, and other equity-based outcomes, while operating under standard land-use planning processes already being streamlined under state law.

Recent state legislation such as SB-35 (2017) and SB-330 (2019) already reform municipal land-use authority to support housing production within measurable benchmarks, limiting local discretion in permitting and zoning according to standards set by the Regional Housing Need Allocation (RHNA) process, the Housing Accountability Act (HAA), and the state Housing Element process.³⁹ The state legislature has also moved to increase affordable housing financing for municipalities by establishing the Bay Area Housing Finance Authority (BAHFA) in 2019; and in Senate Constitutional Amendment 2 (2021) by Sen. Ben Allen (D-Santa Monica), proposing removal of the state constitutional requirement for local referendum approval “low-rent” housing with more than 50% of its funding from the local jurisdiction. State law under AB-686 (2018) also requires cities to meet the goals of the Obama Administration’s Affirmatively Furthering Fair Housing rule under the 1968 Fair Housing Act in their housing elements and general plans. However, this policy framework is ultimately enforced by private right of action, on both sides of the issue: unsuccessful litigation attempted to overturn state-compliant by-right permits for housing development in Cupertino⁴⁰, and nonprofit advocates successfully sued the cities of Pleasanton⁴¹ after it failed to produce a state-compliant Housing Element. But rather than a positive guarantee to universal housing security, enforcement through private right of action puts the onus on the coordination of constituencies by definition with less housing security to assert their diffuse legal rights through state and local jurisdictions.

³⁷ Doocy, S. (2018). School District Employee Housing in California. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/research-and-policy/school-district-employee-housing-in-california/>

³⁸ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/2019-04-25%20Land%20Use%20Agenda%20for%20Posting.pdf

³⁹ Elmendorf, C. et al. (2020). Superintending Local Constraints on Housing Development: How California Can Do It Better. *UC Davis Legal Studies Research Paper Series*.

⁴⁰ Friends of Cupertino v. City of Cupertino. No. 18CV330190. Superior Court of California, County of Santa Clara. (2020).

⁴¹ Urban Habitat Program v. City of Pleasanton. No. A118327. Court of Appeal, First District, Division 2, California. (2008).

This adversarial legal environment is inconsistent with a public commitment to universal fair housing. Liability does not ultimately hinge on the public sector's ability to guarantee adequate housing. To the extent that a municipal government chooses to take on such "liabilities" as a moral obligation, it must also devote its real assets to meet this obligation and balance the moral ledger. Local governments can coordinate and amplify their resources to improve housing outcomes through more inclusive land-use regulations, and an expanded authority as lender and lessor of last resort.

However, the United Nations Office of the High Commissioner for Human Rights (OHCHR) specifies that the right to adequate housing "clearly does not oblige the Government to construct a nation's entire housing stock."⁴²

Rather, the right to adequate housing covers measures that are needed to prevent homelessness, prohibit forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that everyone's housing is adequate. These measures can require intervention from the Government at various levels: legislative, administrative, policy or spending priorities. It can be implemented through an enabling approach to shelter where the Government, rather than playing the role of housing provider, becomes the facilitator of the actions of all participants in the production and improvement of shelter.

To that end, the City of Berkeley could proactively affirm housing as a human right according to measurable parameters of cost-burden and non-discriminatory access, as well as broader historical data and actionable moral commitments to restorative justice. Rather than *retroactive* enforcement of state housing mandates through private right of action, the City's administrative departments should continuously monitor the availability, adequacy, and equitable distribution of housing as publicly available Housing Justice Indicators, reevaluating policy tools including public investment and planning and development goals as needed to *proactively* guarantee housing as a basic right. A publicly available, user-friendly data dashboard of Housing Justice Indicators could maintain accountability of the City's civic institutions in meeting this mandate.

Vienna's 2016 "wohnbauoffensive" reforms, considered analogously with the Berkeley City Council's 2019 referral for a Missing Middle Report⁴³, are both essentially *ad hoc* responses to an immediate crisis, recognizing that inequitable land-use planning should be reformed to actively promote economic justice. Regular administrative oversight could be implemented to more quickly intervene in these inequities and further prevent material harm to vulnerable communities. The City Manager's office has already recommended a strategic focus on streamlining and reforming land use policy to enable

⁴² See footnote 1.

⁴³ https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-23_Item_32_Missing_Middle_Report.aspx

a greater scale of housing production in its 1000 Person Plan to Address Homelessness.⁴⁴

4. Continue to implement changes to Berkeley's Land Use, Zoning, and Development Review Requirements for new housing with an eye towards alleviating homelessness. If present economic trends continue, the pace with which new housing is currently being built in Berkeley will likely not allow for a declining annual homeless population. Berkeley should continue to streamline development approval processes and reform local policies to help increase the overall supply of housing available, including affordable housing mandated by inclusionary policies.

The calibration of housing stability policy should continuously operate within transparent parameters of community engagement and historical data, so that a pilot program can begin from the outset with a concretely-defined goal of affirmatively redressing racial inequities in wealth, opportunity, health and educational outcomes. State and regional entities such as the state's Tax Credit Allocation Committee (TCAC), the Metropolitan Transportation Commission (MTC), and UC Berkeley scholars already maintain active measures of economic opportunity, racial segregation, transit access, environmental health, and other positive outcomes for developing policy recommendations.

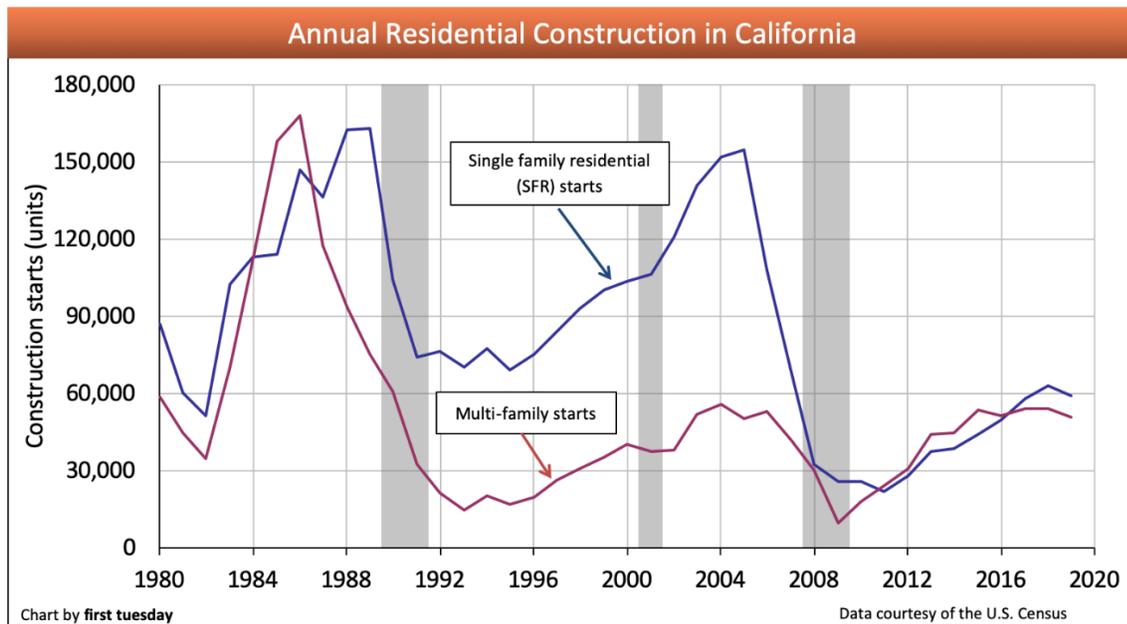
An "automatic stabilizer" paradigm with (a) a revolving land equity fund financing Reparative Housing Justice goals, and (b) periodic empirical review of land-use policy by the Planning Department, could quickly quantify unmet needs for housing security. Developing and implementing responses to needs in the community codified and expeditious administrative process, just as automated stimulus payments could quickly reduce material deprivation during business cycle downturns. Unlike stimulus payments, however, restorative housing justice should be a permanent goal of city service administration.

Public development entities enjoy the benefit of longer-term financial horizons that help produce more stable housing outcomes. Unhindered by the fiduciary duty to produce short-term positive returns for private investors, public housing development agencies are not obligated to cease production and layoff construction workers during recessions.

The private market has been incapable of meeting the need for shelter in California across business cycles. Private capital bids up the costs of inputs during upcycles, but financing dries up during recessions as investors flee the volatile market. Recovery in the construction sector is sluggish, but demand for shelter does not disappear. Construction rates collapsed after the Great Recession of 2008, but as of 2020, they had barely recovered to rates of the previous recession of 2001.⁴⁵

⁴⁴ https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx

⁴⁵ The slowing trend in California construction costs. (2019). first tuesday Journal. Retrieved from <https://journal.firsttuesday.us/the-rising-trend-in-california-construction-starts/17939/>



In a crudely Keynesian paradigm, these downturns are precisely when the public sector should step in to sustain housing development to meet the need for shelter, sustain employment, and boost aggregate demand. Unfortunately, California's housing market volatility limits the state and local government's resources when they are needed the most. For instance, California's construction workforce in 2017 lagged below its historic peak in 2006, equivalent to the size of the workforce at start of the economic recovery in 2011.⁴⁶ In contrast, Vienna's social housing program also stabilizes employment in the region by employing 20,000 workers in the building trades.

Compounding this structural deficit, state and local funding sources for affordable housing are pro-cyclical and likelier to see a decline in revenues during economic downturns. Berkeley's inclusionary zoning and Affordable Housing Mitigation Fee produce Below Market-Rate homes or revenues for the Housing Trust Fund contingent on "value capture" policies that rely on the willingness of private capital to invest in the value. The Low Income Housing Tax Credit program (LIHTC), the linchpin of affordable housing financing in the United States, relies on the incentive of corporate tax liability by providing tax credits to large corporations and financial institutions in exchange for equity in low-income housing projects within a finite time horizon. Reductions in corporate profits during recessions and cuts to the corporate tax rate have both reduced the value of these tax credits periodically.⁴⁷

⁴⁶ Littlehale, S. (2019). Rebuilding California: The Golden State's Housing Workforce Reckoning. *Smart Cities Prevail*. Retrieved from https://www.smartcitiesprevail.org/wp-content/uploads/2019/01/SCP_HousingReport.0118_2.pdf

⁴⁷ Scally, C. et al. (2018). The Low-Income Housing Tax Credits: Past Achievements, Future Challenges. *Urban Institute*. Retrieved from https://www.urban.org/sites/default/files/publication/98761/lihtc_past_achievements_future_challenges_finalize_d_1.pdf.

At the same time, highly leveraged private equity firms that specialize in liquidation of large portfolios or “asset stripping” benefit from volatile recessions that displace lower-income homeowners primarily in communities of color with less liquid capital to sustain riskier mortgage debt. Poorer households, primarily Black and Latinx residents, are more likely to end up trapped in cycles of poverty and homelessness, suffering for the benefit of wealthier and whiter financial institutions.

The Vienna Housing Fund offers a model for building wealth in the local community and affirmatively redressing the historic inequities intensified by cyclical volatility. By providing a revolving low-interest loan fund for tenants, nonprofits, limited equity cooperatives and Community Land Trusts, the City could plan for optimizing housing decommodification to meet concrete benchmarks in material outcomes: eliminating involuntary displacement, repairing wealth inequities in communities of color, and maintaining market price parity with regional incomes.

Rather than bearing 100% of project costs independently, a municipal fund could seek to partner with state and regional mechanisms for land value redistribution, such as Transit Value Capture Districts (TVCDs)⁴⁸ or Enhanced Infrastructure Finance Districts (EIFDs), which have been studied or proposed for financing affordable housing and other capital costs at BART stations.

As a countercyclical policy to sustain affordable housing financing across market cycles, a municipal revolving loan fund could provide loan guarantees or bridge loans to LIHTC developments to ensure their completion. As a reparative anti-displacement policy, a revolving loan fund could reinforce the city’s Local Preference policy for affordable housing included in the Adeline Corridor Specific Plan by providing favorable loan terms to community land trusts, tenant acquisitions, and nonprofit affordable housing developments that prioritize the return of formerly displaced residents from low-income communities of color. The loan fund can also seek matching funds from the newly-established Bay Area Housing Finance Authority (BAHFA), in direct partnership with the MTC and Association of Bay Area Governments (ABAG). In order to provide more housing security across the economic spectrum, a municipal revolving loan fund can consider more generous loan renegotiation terms or loan forgiveness, including the option of paying loans back to the fund in equity stakes.

The City of Berkeley is fortunate to not find itself in the same conditions as a bombed-out postwar Vienna, which made the consolidation of a large public land portfolio for the Vienna Housing Fund tragically inexpensive. However, Berkeley is blessed with a robust and growing tax base. Initially, such a loan fund may start small, with seed capital from the city’s Small Sites Program and/or bootstrapped with Berkeley’s existing real property portfolio, but over time it would be able to draw upon its growing portfolio of assets to self-finance operating costs while investing in new affordable housing

⁴⁸ Sagehorn, D. & Hawn, J. (2020). Transit Value Capture for California. *Common Ground California*. Retrieved from http://cacommonground.org/pdf/2020-12_Transit_Value_Capture.pdf

projects.⁴⁹ A budget referral should only proceed following a feasibility study to identify policy and funding goals for monitoring and addressing Housing Justice Indicators.

Homelessness and housing insecurity are the result of deliberate but diffuse policy choices. The feasibility of permanently guaranteeing housing security in Berkeley remains unknown, but our community nevertheless recognizes the imperative to make different policy choices to that end. The City of Berkeley can build on the precedents and procedures established in state law, affirm housing as a human right, and enforce concrete goals toward reparative housing justice as a permanent mandate of our municipal public service.

ALTERNATIVES CONSIDERED

The Berkeley City Council and the city's voters have taken clear steps to invest in housing security and affordable housing production. To the extent that the City is already developing and implementing affordable housing policies, the feasibility of these policy tools would not be mutually exclusive with other public investments and reforms currently underway.

ENVIRONMENTAL IMPACTS

Mixed-income housing development adjacent to frequent, reliable public transit and walkable street infrastructure can further the goals of the City's 2017 Climate Action Plan Update⁵⁰, which include:

Goal 4. Increase compact development patterns (especially along transit corridors)

Encouraging sustainable modes of travel such as cycling, walking, and public transit, is fundamentally tied to compact development patterns and the mix of land uses near transit hubs and jobs. For example, evidence shows that people who live near transit drive between 20% and 40% less than those who do not.

The City's 2018 Greenhouse Gas Inventory found that transportation accounted for 60% of Berkeley's greenhouse gas (GHG) emissions.⁵¹ According to a 2018 Progress Report from the California Air Resources Board: "Even if the share of new car sales that are [zero-emission electric vehicles] grows nearly 10-fold from today, California would still need to reduce VMT [Vehicle Miles Traveled] per capita 25 percent to achieve the necessary reductions for 2030."⁵² A 2019 report by the United Nations' International

⁴⁹ Baxamusa, M. (2020). A New Model for Housing Finance: Public and Private Sectors Working Together to Build Affordability. *Routledge Focus*. p. 123.

⁵⁰ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/2017-12-07%20WS%20Item%2001%20Climate%20Action%20Plan%20Update.pdf

⁵¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx

⁵² https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

Resource Panel (IRP) emphasizes curbing suburban sprawl as a strategy to curb GHG emissions in urban areas that can also enhance the material outcomes provided by public services: “Optimizing densities and reducing sprawl also improves the sharing of resources (e.g. shared walls and roofs in apartment blocks) and reduces the distances that need to be covered by infrastructure networks (e.g. shorter pipes), allowing for savings in the materials and costs associated with service provision.”⁵³

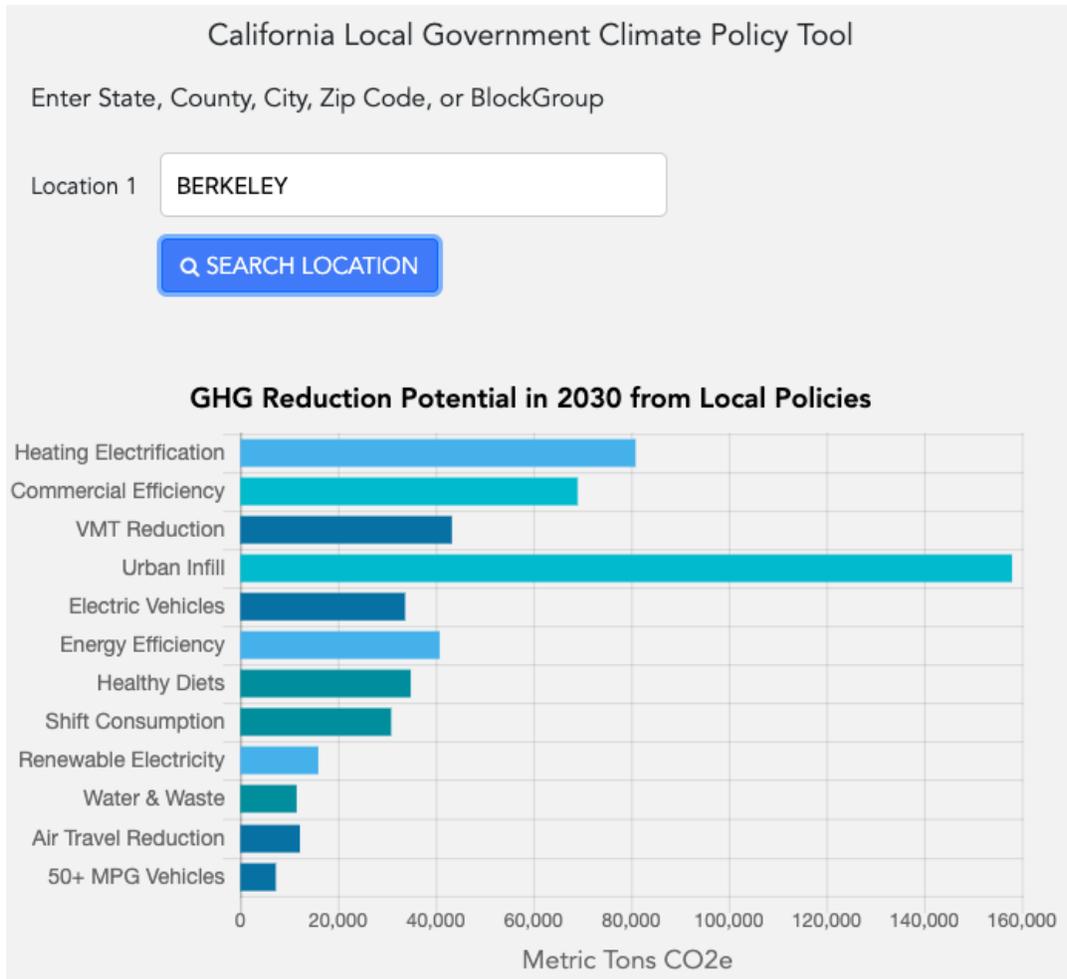
Critically, though, economic integration is vital to promoting an absolute reduction in per capita VMT. Mixed-income development providing transit-accessible housing security across the entire economic spectrum should maximize the potential for both reducing the carbon footprints of affluent, higher-emission households, and preventing the displacement of poorer, lower-emission households to higher-VMT suburban areas with larger per capita carbon footprints.

While research from UC Berkeley⁵⁴ has found that wealthier households see larger emissions reductions from living in denser urban areas, a recent study of displacement and gentrification in Seattle also found significant increases in GHG emissions when lower-income households were displaced to outer suburbs with higher VMT land-use patterns and longer commutes.⁵⁵ Notably, the same UC Berkeley study evaluates emission reduction potentials of a suite of municipal public policies in 700 California cities. Using the modeling from this study, the California Local Government Policy Tool from the Cool Climate Network shows that urban infill development offers the greatest potential for mitigating Berkeley’s GHG emissions.

⁵³ United Nations IRP. (2019). The Weight of Cities: Resource Requirements of Future Urbanization. Retrieved from <https://www.resourcepanel.org/reports/weight-cities>

⁵⁴ Jones et al. (2018). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*. 3(2). DOI: 10.17645/up.v3i2.1218

⁵⁵ Rice et al. (2020). Contradictions of the Climate-Friendly City: New Perspectives on Eco-Gentrification and Housing Justice. *International Journal of Urban and Regional Research*. 44(1):145-165.



FISCAL IMPACTS

TBD.—Staff time on financial feasibility study. The City Manager’s office has projected a \$12.7 million annual cost to achieve strategic goals enumerated in the 1000 Person Plan to End Homelessness by 2023, but the costs of reforming land use to affirmatively further housing justice remains unquantified. Because such a pilot program would aim to include a broader range of income levels and larger projects, project costs may ultimately not be comparable to the Small Sites Program. Feasibility study should aim for a long-term self-sustaining fiscal structure for Reparative Justice Revolving Loan Fund and identify hard costs of gathering, monitoring and planning policy directives in response to Housing Justice Indicators.

CONTACT

Councilmember Terry Taplin (District 2), 510-983-7120, ttaplin@cityofberkeley.info

ATTACHMENTS/SUPPORTING MATERIALS

1. Resolution
2. Senate Bill 1 (2019), State of Hawaii

3. Assembly Bill 387 (2021), State of California

RESOLUTION NO. ##,###-N.S.

RECOGNIZING HOUSING AS HUMAN RIGHT, REFERRING CITY MANAGER TO STUDY FINANCIAL FEASIBILITY OF MUNICIPAL HOUSING DEVELOPMENT PILOT PROGRAM TO ADMINISTER AUTOMATIC STABILIZERS FOR GUARANTEEING ADEQUATE HOUSING

WHEREAS, the United Nations has recognized housing as a human right in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights; and,

WHEREAS, the right to adequate housing includes freedoms such as protection against forced evictions and arbitrary destruction of housing; right to privacy; non-discriminatory choice of residence, and freedom of movement; and,

WHEREAS, the right to adequate housing includes entitlements such as security of tenure, restitution, equal and non-discriminatory access, and civic participation; and,

WHEREAS, the City of Berkeley has failed to affirm these freedoms and entitlements for its homeless residents, including 813 unsheltered identified in the 2019 Alameda County point-in-time count; and,

WHEREAS, the state of California and its local and regional governments have failed to affirm these freedoms and entitlements for at least 53% of renters who endure excessive cost-burdens, defined as paying over 30% of income for housing, according to the 2017 American Community Survey; and,

WHEREAS, cities around the world including Vienna and Singapore deliver better housing security and quality of life outcomes for their citizens with robust public housing development programs that reinvest revenues from mixed-income housing and real assets to fund operational costs and capital projects; and,

WHEREAS, histories of Jim Crow segregation endure in racial discrimination in mortgage credit and exclusionary land-use policies maintain disproportionate cost burdens and housing insecurity on Black people and low-income communities of color in the United States; and,

WHEREAS, the Berkeley City Council authorized a Missing Middle Report in 2019 on unanimous consent to study reforms to its land-use policies to enable more affordable times of housing construction, transit-oriented development, and racial and economic inclusion; and,

WHEREAS, the Berkeley City Council authorized a Local Preference policy for affordable housing when it passed the Adeline Corridor Specific Plan in 2020 to enable reparative housing security for low-income communities of color bearing the brunt of displacement and gentrification in Berkeley; and,

WHEREAS, the voters of the City of Berkeley authorized large increases in local funding for affordable housing in 2018 with the overwhelming passage of Measures O and P; and,

WHEREAS, a 2017 Analysis of City-Owned Property for Potential for Housing Development by Berkeley's Health, Housing and Community Services Department identified several publicly owned parcels that would require zoning changes and further study for affordable housing production;

NOW THEREFORE, BE IT RESOLVED, that the City of Berkeley recognizes adequate housing as a human right, with recognition of attendant freedoms and entitlements as enumerated by the United Nations;

BE IT FURTHER RESOLVED, that the Berkeley City Council refers the City Manager to study the financial feasibility of a municipal housing development pilot program administering automatic stabilizers to guarantee adequate housing security in Berkeley, with regular community input and periodic monitoring of socioeconomic indicators;

BE IT FURTHER RESOLVED, that the pilot program's feasibility study shall include, but not be limited to,

1. Feasibility study of public lands suitable mixed-income transit-oriented housing development identified in 2017 Analysis of City-Owned Lands and zoning changes needed for affordable housing at listed sites to address all income categories in upcoming Regional Housing Needs Allocation (RHNA) cycle;
2. Pilot program to establish a Reparative Justice Revolving Loan Fund with affirmative racial justice and anti-displacement goals, providing low-interest loans for tenants, nonprofits, limited-equity co-operatives, and community land trusts to acquire, develop, and/or maintain permanently affordable housing.
3. Pilot program to establish publicly available, user-friendly data dashboard monitoring Housing Justice Indicators in the city including, but not limited to, (a) health and safety standards, (b) affordability, (c) stability, and (d) discrimination and disparate impacts under US Department of Housing and Urban Development's Affirmatively Furthering Fair Housing (AFFH) rule; aligning Indicators with thresholds for corrective actions including land-use policy review and fiscal analysis.
4. State and regional partnerships with the California Department of Housing and Community Development, the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), UC Berkeley, and Bay Area Rapid Transit to develop fiscally resilient mixed-income housing and community reinvestment through land held in public trust and/or limited-equity cooperatives and community land trusts.

A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the cost and
2 availability of housing in the State are significant challenges
3 facing Hawaii residents. Although Hawaii has the tenth highest
4 median wage nationally, living expenses are two-thirds higher
5 than the rest of the nation, with the cost of housing being a
6 major contributing factor. In September 2018, the median price
7 for a single-family home on Oahu rose to \$812,500, while the
8 median price for condominiums on Oahu rose to \$428,000.
9 According to a local news report, a household would need to earn
10 almost \$160,000 annually to afford to buy a home on Oahu, making
11 homeownership out of reach for many of Hawaii's residents,
12 especially first-time buyers.

13 Because of the many barriers hindering the production of
14 new housing, such as geographic limitations, lack of major
15 infrastructure, construction costs, and government regulation,
16 the State and housing developers have not been able to produce
17 enough housing for Hawaii residents. According to a 2015 report



S.B. NO. ¹ S.D. 2

1 from the department of business, economic development, and
2 tourism, the projected long-run estimate of demand for total new
3 housing in Hawaii is between 64,700 to 66,000 for the 2015 to
4 2025 period. The legislature has responded through the passage
5 of various legislation. During the regular session of 2016, the
6 legislature passed a bill enacted as Act 127, Session Laws of
7 Hawaii 2016, that, among other things, establishes a goal of
8 developing or vesting the development of at least 22,500
9 affordable rental housing units ready for occupancy by the end
10 of 2026. During the regular session of 2017, the legislature
11 passed a bill enacted as Act 54, Session Laws of Hawaii 2017, to
12 expand the types of rental housing projects that can be exempt
13 from general excise tax, thereby encouraging the development of
14 rental housing projects targeted for occupancy by households at
15 or below the one hundred forty per cent and eighty per cent area
16 median income levels. During the regular session of 2018, the
17 legislature passed a bill enacted as Act 39, Session Laws of
18 Hawaii 2018, that, among other things, provides an estimated
19 total value of \$570,000,000 to address Hawaii's affordable
20 rental housing crisis and is expected to generate more than
21 25,000 affordable units by the year 2030.



1 Despite these efforts, the amount of new construction of
2 housing, especially for low- to middle-income families,
3 continues to be inadequate as the supply of housing remains
4 constrained while demand for housing increases. This lack of
5 supply leads to higher housing prices and rents for households
6 of all income levels, leaving all tenants with less disposable
7 income, increasing the personal stress on buyers and renters,
8 and exacerbating overcrowding and homelessness. Given these
9 consequences, the lack of affordable housing requires the
10 concentrated attention of state government at the highest level.

11 The legislature further finds that Singapore faced a
12 housing crisis in the 1940s through 1960s but was subsequently
13 able to provide nearly one million residential units for its
14 citizens. The housing and development board -- the government
15 entity responsible for the rapid increase in housing development
16 -- plans, develops, and constructs the housing units, including
17 commercial, recreational, and social amenities. The result is
18 that units built by the housing and development board house
19 eighty per cent of the resident population and that, overall,
20 ninety per cent of the resident population are owners of their
21 units. Through government loans, subsidies, and grants and the



1 use of money saved through a government-run mandatory savings
 2 program, residents are able to purchase residential units at an
 3 affordable price, including options to upgrade to a better
 4 living environment in the future.

5 The legislature further finds that with Honolulu's
 6 construction of an elevated rail transit system, the State has
 7 an opportunity to enhance Oahu's urban environment and increase
 8 the quality of life for residents by increasing the affordable
 9 housing inventory and eliminating the need for personal
 10 automobiles, among other public benefits. As the largest
 11 landowner of properties along the transit line, with
 12 approximately two thousand acres under the jurisdiction of
 13 various departments, the State must be proactive in establishing
 14 a unified vision and approach toward redevelopment of its
 15 properties to maximize the benefits of state lands available for
 16 redevelopment.

17 The purpose of this Act is to:

- 18 (1) Establish the ALOHA homes program to facilitate the
- 19 creation of low-cost leasehold homes for sale to
- 20 Hawaii residents on state-owned land near public
- 21 transit stations; and



1 (2) Authorize the Hawaii housing finance and development
 2 corporation to sell the leasehold interest in
 3 residential condominium units located on state lands
 4 for lease terms of ninety-nine years.

5 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
 6 amended by adding two new subparts to part II to be
 7 appropriately designated and to read as follows:

8 "B. ALOHA Homes Program

9 **§201H-A Definitions.** As used in this subpart, the
 10 following terms have the following meanings, unless the context
 11 indicates a different meaning or intent:

12 "ALOHA" means affordable, locally owned homes for all.

13 "ALOHA home" means a residential unit within the urban
 14 redevelopment district.

15 "Commercial project" means an undertaking involving
 16 commercial or light industrial development, which includes a
 17 mixed-use development where commercial or light industrial
 18 facilities may be built into, adjacent to, under, or above
 19 residential units.

20 "High density" means a project or area that has at least
 21 two hundred fifty units per acre.



1 "Multipurpose project" means a project consisting of any
2 combination of a commercial project, redevelopment project, or
3 residential project.

4 "Owner-occupied residential use" means any use currently
5 permitted in existing residential zones consistent with owner
6 occupancy, but shall not mean renting or leasing to any tenant
7 or lessee of any kind.

8 "Project" means a specific work or improvement, including
9 real and personal properties, or any interest therein, acquired,
10 owned, constructed, reconstructed, rehabilitated, or improved by
11 the corporation, including a commercial project, redevelopment
12 project, or residential project.

13 "Public agency" means any office, department, board,
14 commission, bureau, division, public corporation agency, or
15 instrumentality of the federal, state, or county government.

16 "Public facilities" includes streets, utility and service
17 corridors, and utility lines where applicable, sufficient to
18 adequately service developable improvements in the district,
19 sites for schools, parks, parking garages, sidewalks, pedestrian
20 ways, and other community facilities. "Public facilities" also
21 includes public highways, as defined in section 264-1, storm



1 drainage systems, water systems, street lighting systems, off-
2 street parking facilities, and sanitary sewerage systems.

3 "Public transit station" means:

4 (1) A station connected to a locally preferred alternative
5 for a mass transit project; or

6 (2) For the city and county of Honolulu, a station of the
7 Honolulu rail transit system.

8 "Redevelopment project" means an undertaking for the
9 acquisition, clearance, replanning, reconstruction, and
10 rehabilitation, or a combination of these and other methods, of
11 an area for a residential project, for an incidental commercial
12 project, and for other facilities incidental or appurtenant
13 thereto, pursuant to and in accordance with this subpart. The
14 terms "acquisition, clearance, replanning, reconstruction, and
15 rehabilitation" shall include renewal, redevelopment,
16 conservation, restoration, or improvement, or any combination
17 thereof.

18 "Residential project" means a project or that portion of a
19 multipurpose project, including residential dwelling units,
20 designed and intended for the purpose of providing housing and
21 any facilities as may be incidental or appurtenant thereto.



1 "Small and medium vendor" means a commercial vendor that
2 employs nine hundred ninety-nine employees or less.

3 §201H-B ALOHA homes program. There is established the
4 ALOHA homes program for the purpose of providing low-cost, high
5 density leasehold homes for sale to Hawaii residents on state-
6 owned lands within a one-half mile radius of a public transit
7 station.

8 §201H-C Community and public notice requirements; posting
9 on the corporation's website; required. For the purposes of
10 this subpart, the corporation shall adopt community and public
11 notice procedures pursuant to chapter 91 that shall include at a
12 minimum:

13 (1) A means to effectively engage the community in which
14 the corporation is planning a development project
15 under this subpart to ensure that community concerns
16 are received and considered by the corporation;

17 (2) The posting of the corporation's proposed plans for
18 any development project under this subpart, public
19 hearing notices, and minutes of its proceedings on the
20 corporation's website;



- 1 (3) The posting of every application for a development
- 2 project on the corporation's website when the
- 3 application is deemed complete;
- 4 (4) Notification by the applicant of any application for a
- 5 development project valued at \$250,000 or more by
- 6 first class United States mail, postage prepaid to
- 7 owners and lessees of record of real property located
- 8 within a three hundred foot radius of the perimeter of
- 9 the proposed project identified from the most current
- 10 list available from the real property assessment
- 11 division of the department of budget and fiscal
- 12 services of the city and county of Honolulu when the
- 13 application is deemed complete; provided that notice
- 14 mailed pursuant to this paragraph shall include but
- 15 not be limited to notice of:
- 16 (A) Project specifications;
- 17 (B) Requests for exemptions from statutes,
- 18 ordinances, charter provisions, and rules
- 19 pursuant to section 201H-38; and
- 20 (C) Procedures for intervention and a contested case
- 21 hearing; and



1 (5) Any other information that the public may find useful
 2 so that it may meaningfully participate in the
 3 corporation's decision-making processes.

4 **§201H-D Urban redevelopment district; established;**
 5 **boundaries.** The urban redevelopment district is established.
 6 The urban redevelopment district shall include all state-owned
 7 and county-owned land within county-designated transit-oriented
 8 development areas or within a one-half-mile radius of a public
 9 transit station in a county with a population greater than five
 10 hundred thousand.

11 **§201H-E Rules; guidelines.** (a) The corporation shall
 12 establish rules under chapter 91 on health, safety, building,
 13 planning, zoning, and land use, which shall supersede all other
 14 inconsistent ordinances and rules relating to the use, zoning,
 15 planning, and development of land and construction thereon.
 16 Rules adopted under this section shall follow existing law,
 17 rules, ordinances, and regulations as closely as is consistent
 18 with standards meeting minimum requirements of good design,
 19 pleasant amenities, health, safety, and coordinated development.
 20 The corporation may provide that lands within the urban
 21 redevelopment district shall not be developed beyond existing



1 uses or that improvements thereon shall not be demolished or
2 substantially reconstructed, or provide other restrictions on
3 the use of the lands.

4 (b) The following shall be the principles generally
5 governing the corporation's action in the urban redevelopment
6 district:

7 (1) The corporation shall endeavor to produce enough
8 housing supply to meet housing demand;

9 (2) Each development may include facilities to replace any
10 facilities that must be removed for the development's
11 construction;

12 (3) Development shall be revenue-neutral to the State, and
13 all revenues generated shall be used for the purposes
14 of this subpart;

15 (4) The corporation may build infrastructure beyond what
16 exists in any development under this subpart and may
17 sell the infrastructure capacity to other private
18 sector developers;

19 (5) The corporation may build common area facilities for
20 any development undertaken pursuant to this subpart,



1 which shall be paid through the sales of ALOHA homes
2 units;

3 (6) Development shall result in a community that permits
4 an appropriate land mixture of residential,
5 commercial, light industrial, and other uses. In view
6 of the innovative nature of the mixed use approach,
7 urban design policies shall be established for the
8 public and private sectors in the proper development
9 of the urban redevelopment district; provided that any
10 of the corporation's proposed actions in the urban
11 redevelopment district that are subject to chapter 343
12 shall comply with chapter 343 and federal
13 environmental requirements; provided further that the
14 corporation may engage in any studies or coordinative
15 activities permitted in this subpart which affect
16 areas lying outside the district, where the
17 corporation in its discretion decides that those
18 activities are necessary to implement the intent of
19 this subpart. The studies or coordinative activities
20 shall be limited to facility systems, resident and
21 industrial relocation, and other activities with the



1 counties and appropriate state agencies. The
 2 corporation may engage in construction activities
 3 outside of the urban redevelopment district; provided
 4 that the construction relates to infrastructure
 5 development or residential or business relocation
 6 activities; provided further that the construction
 7 shall comply with the general plan, development plan,
 8 ordinances, and rules of the county in which the urban
 9 redevelopment district is located;

10 (7) Existing and future light industrial uses accessory to
 11 shall be permitted and encouraged in appropriate
 12 locations within the urban redevelopment district. No
 13 plan or implementation strategy shall prevent
 14 continued activity or redevelopment of light
 15 industrial and commercial uses which meet reasonable
 16 performance standards;

17 (8) Activities shall be located so as to provide primary
 18 reliance on public transportation and pedestrian
 19 facilities for internal circulation within the urban
 20 redevelopment district or designated subareas;



- 1 (9) Major view planes, view corridors, and other
- 2 environmental elements such as natural light and
- 3 prevailing winds, may be preserved through appropriate
- 4 regulation and design review;
- 5 (10) All projects shall comply with all applicable
- 6 statutes, rules, and ordinances related to historic
- 7 and cultural resource preservation;
- 8 (11) Where compatible, land use activities within the urban
- 9 redevelopment district shall to the greatest possible
- 10 extent be mixed horizontally within blocks or other
- 11 land areas, and vertically as integral units of multi-
- 12 purpose structures;
- 13 (12) Development shall prioritize maximizing density on
- 14 lands that are most urbanized and most suitable for
- 15 high density; provided that development may require a
- 16 mixture of densities, building types, and
- 17 configurations in accordance with appropriate urban
- 18 design guidelines and vertical and horizontal
- 19 integration of residents of varying incomes, ages, and
- 20 family groups that reflect the diversity of Hawaii.
- 21 Development shall provide necessary community



1 facilities, such as parks, community meeting places,
 2 child care centers, schools, educational facilities,
 3 libraries, and other services, within and adjacent to
 4 residential development; provided that any school that
 5 is provided by the corporation as a necessary
 6 community facility shall be exempt from school size
 7 requirements as calculated by recent school site area
 8 averages pursuant to section 302A-1602;

9 (13) Public facilities within the urban redevelopment
 10 district shall be planned, located, and developed so
 11 as to support the redevelopment policies for the
 12 district established by this subpart and plans and
 13 rules adopted pursuant to it;

14 (14) Development shall be achieved through the efficient
 15 and cost-effective use of government and private-
 16 sector workforces through public-private partnerships
 17 and other mechanisms to incentivize development to be
 18 on time and on budget;

19 (15) Development shall be designed, to the extent possible,
 20 to minimize traffic, parking, the use of private
 21 automobiles, and noise;



1 (16) Development shall be subject to chapter 104; and

2 (17) Development shall incorporate universal design in
3 compliance with the Americans with Disabilities Act of
4 1990 and Uniform Federal Accessibility Standards, to
5 the extent possible, and exceed accessibility
6 requirements under those authorities.

7 (c) ALOHA homes within the urban redevelopment district
8 shall not be advertised for rent, rented, or used for any
9 purpose other than owner-occupied residential use; provided that
10 the corporation, by rule, shall establish penalties for
11 violations of this subsection up to and including forced sale of
12 an ALOHA home.

13 (d) The corporation shall establish a competition process
14 for selecting the design and development vendors of ALOHA homes
15 with the appropriate number of units to accommodate small and
16 medium vendors. The criteria of the competition process shall
17 include preferences on the basis of prior experience in the
18 State and an understanding of the State's unique culture;
19 provided that the corporation may include an opportunity for
20 community input through public vote. The corporation may



1 provide a stipend in a manner and an amount to be determined by
2 the corporation to competitors pursuant to this subsection.

3 (e) The corporation may transfer ALOHA homes units to the
4 office of Hawaiian affairs and department of Hawaiian home lands
5 for use by their respective beneficiaries.

6 (f) The corporation shall recoup all expenses through the
7 sales of the leasehold interest of ALOHA homes and other revenue
8 sources, including the leasing of commercial projects.

9 **§201H-F Sale of the leasehold interest of ALOHA homes;**
10 **rules; guidelines.** (a) The corporation shall adopt rules,
11 pursuant to chapter 91, for the sale of the leasehold interest
12 of ALOHA homes under its control within the urban redevelopment
13 district; provided that each lease shall be for a term of
14 ninety-nine years. The rules shall include the following
15 requirements for an eligible buyer or owner of an ALOHA home
16 within the district:

17 (1) The person shall be a resident of the State; provided
18 that voting in the most recent primary or general
19 election shall be an indication of residency in the
20 State; provided further that not voting in any primary



1 or general election creates a rebuttable presumption
2 of non-residency;

3 (2) The person shall not use the ALOHA home for any
4 purpose other than owner-occupied residential use; and

5 (3) The person, or the person's spouse, shall not own any
6 other real property, including any residential and
7 non-residential property, beneficial ownership of
8 trusts, and co-ownership or fractional ownership,
9 while owning an ALOHA home in the district; provided
10 that an eligible buyer may own real property up to six
11 months after closing on the purchase of an ALOHA home;
12 provided further that an owner of an ALOHA home in the
13 process of selling the ALOHA home may own other real
14 property up to six months prior to closing on the sale
15 of the ALOHA home to an eligible buyer;

16 provided that the rules under this subsection shall not include
17 any requirements or limitations related to an individual's
18 income or any preferences to first-time home buyers. The rules
19 shall include strict enforcement of owner-occupancy, including a
20 prohibition on the renting or leasing of an ALOHA home to any
21 tenant or lessee, and may include requirements for the use of



1 face recognition, verification of the presence of owner-
 2 occupants and prevention of access of all unauthorized persons
 3 through retina scan for a minimum number of days per year, or
 4 fingerprint scan technology.

5 (b) ALOHA homes within the urban redevelopment district
 6 shall be priced to be affordable, as determined by the United
 7 States Department of Housing and Urban Development, to an
 8 individual or family whose income does not exceed eighty per
 9 cent of the area median income, or \$300,000, whichever is less;
 10 provided that the price shall be adjusted for inflation.

11 (c) The corporation shall establish waitlists for each
 12 residential development for eligible buyers to determine the
 13 order in which ALOHA homes shall be sold. Waitlist priorities
 14 may include school, college, or university affiliation if the
 15 residential property is a redeveloped school, college, or
 16 university; proximity of an eligible buyer's existing residence
 17 to an ALOHA home within the urban redevelopment district; and
 18 other criteria based on the impact that the development has on
 19 the eligible buyer.

20 (d) ALOHA homes within the urban redevelopment district
 21 shall be sold only to other eligible buyers.



1 (e) An owner of an ALOHA home may sell the ALOHA home
2 after five or more years of owner-occupancy; provided that the
3 corporation shall have the right of first refusal to purchase
4 the ALOHA home at a price that is determined by the corporation
5 using the price at which the owner purchased the ALOHA home as
6 the cost basis, adjusted for inflation, and may include a
7 percentage of the appreciation in value of the unit. If the
8 corporation does not exercise its right to purchase the ALOHA
9 home, the ALOHA home may be sold by the owner to an eligible
10 buyer; provided that the corporation shall retain seventy-five
11 per cent of all profits from the sale net of closing and
12 financing costs, using the price at which the owner purchased
13 the ALOHA home as the cost basis. Upon the death of the owner
14 of an ALOHA home, the ALOHA home may be transferred to the
15 deceased's heir by devise or as any other real property under
16 existing law; provided that if the heir is not an eligible
17 buyer, the heir shall sell the ALOHA home to the corporation at
18 a price that is determined by the corporation using the price at
19 which the owner purchased the ALOHA home as the cost basis,
20 adjusted for inflation, and may include a percentage of the
21 appreciation in value of the unit.



1 (f) If an owner of an ALOHA home sells the ALOHA home
 2 before five years of owner-occupation, the corporation shall
 3 purchase the ALOHA home at a price that is determined by the
 4 corporation using the price at which the owner purchased the
 5 ALOHA home as the cost basis, adjusted for inflation.

6 (g) Any ALOHA home developed and sold under this subpart
 7 shall not be subject to sections 201H-47, 201H-49, 201H-50, and
 8 201H-51.

9 **§201H-G Use of public lands; acquisition of state lands.**

10 (a) If state lands under the control and management of other
 11 public agencies are required by the corporation for the purposes
 12 of this subpart, the agency having the control and management of
 13 those required lands, upon request by the corporation and with
 14 the approval of the governor, may convey or lease those lands to
 15 the corporation upon terms and conditions as may be agreed to by
 16 the parties.

17 (b) Notwithstanding the foregoing, no public lands shall
 18 be conveyed or leased to the corporation pursuant to this
 19 section if the conveyance or lease would impair any covenant
 20 between the State or any county or any department or board



1 thereof and the holders of bonds issued by the State or that
2 county, department, or board.

3 **§201H-H Acquisition of real property from a county.**

4 Notwithstanding the provision of any law or charter, any county,
5 by resolution of its local governing body, may, without public
6 auction, sealed bids, or public notice, sell, lease, grant, or
7 convey to the corporation any real property owned by it that the
8 corporation certifies to be necessary for the purposes of this
9 subpart. The sale, lease, grant, or conveyance shall be made
10 with or without consideration and upon terms and conditions as
11 may be agreed upon by the county and the corporation.

12 Certification shall be evidenced by a formal request from the
13 corporation. Before the sale, lease, grant, or conveyance may
14 be made to the corporation, a public hearing shall be held by
15 the local governing body to consider the same. Notice of the
16 hearing shall be published at least six days before the date set
17 for the hearing in the publication and in the manner as may be
18 designated by the local governing body.

19 **§201H-I Condemnation of real property.** The corporation,
20 upon making a finding that it is necessary to acquire any real
21 property for its immediate or future use for the purposes of



1 this subpart, may acquire the property, including property
 2 already devoted to a public use, by condemnation pursuant to
 3 chapter 101. The property shall not thereafter be taken for any
 4 other public use without the consent of the corporation. No
 5 award of compensation shall be increased by reason of any
 6 increase in the value of real property caused by the designation
 7 of the urban redevelopment district or plan adopted pursuant to
 8 a designation, or the actual or proposed acquisition, use, or
 9 disposition of any other real property by the corporation.

10 **§201H-J Relocation.** The corporation shall adopt rules
 11 pursuant to chapter 91 in compliance with the Uniform Relocation
 12 Assistance and Real Property Acquisition Act of 1970 and chapter
 13 111 to ensure the appropriate relocation within or outside the
 14 district of persons, families, businesses, or services displaced
 15 by governmental action within the urban redevelopment district.

16 **§201H-K Construction contracts.** (a) The corporation
 17 shall award construction contracts for ALOHA homes in conformity
 18 with section 201H-E(d), without regard to chapter 103D.

19 (b) The corporation shall award construction contracts for
 20 commercial projects without regard to chapter 103D.



1 **§201H-L Lease of projects.** Notwithstanding any law to the
2 contrary, the corporation, without recourse to public auction or
3 public notice for sealed bids, may lease for a term not
4 exceeding sixty-five years all or any portion of the real or
5 personal property constituting a commercial project to any
6 person, upon terms and conditions as may be approved by the
7 corporation; provided that all revenues generated from the lease
8 shall be used to support the purpose of this subpart pursuant to
9 section 201H-B.

10 **§201H-M Dedication for public facilities as condition to**
11 **development.** The corporation shall establish rules requiring
12 dedication for public facilities of land or facilities by
13 developers as a condition of developing real property within the
14 urban redevelopment district. Where state and county public
15 facilities dedication laws, ordinances, or rules differ, the
16 provision for greater dedication shall prevail.

17 **§201H-N ALOHA homes revolving fund.** There is created the
18 ALOHA homes revolving fund into which all receipts and revenues
19 of the corporation pursuant to this subpart shall be deposited.
20 Proceeds from the fund shall be used for the purposes of this
21 subpart.



1 **§201H-O Expenditures of ALOHA homes revolving fund under**
2 **the corporation exempt from appropriation and allotment. Except**
3 **as to administrative expenditures, and except as otherwise**
4 **provided by law, expenditures from the ALOHA homes revolving**
5 **fund administered by the corporation may be made by the**
6 **corporation without appropriation or allotment of the**
7 **legislature; provided that no expenditure shall be made from and**
8 **no obligation shall be incurred against the ALOHA homes**
9 **revolving fund in excess of the amount standing to the credit of**
10 **the fund or for any purpose for which the fund may not lawfully**
11 **be expended. Nothing in sections 37-31 to 37-41 shall require**
12 **the proceeds of the ALOHA homes revolving fund administered by**
13 **the corporation to be reappropriated annually.**

14 **§201H-P Assistance by state and county agencies. Any**
15 **state or county agency may render services for the purposes of**
16 **this subpart upon request of the corporation.**

17 **§201H-Q Court proceedings; preferences; venue. (a) Any**
18 **action or proceeding to which the corporation, the State, or the**
19 **county may be a party, in which any question arises as to the**
20 **validity of this subpart, shall be brought in the circuit court**
21 **of the circuit where the case or controversy arises, and shall**



1 be heard and determined in preference to all other civil cases
2 pending therein except election cases, irrespective of position
3 on the calendar.

4 (b) Upon application of counsel to the corporation, the
5 same preference shall be granted in any action or proceeding
6 questioning the validity of this subpart in which the
7 corporation may be allowed to intervene.

8 (c) Notwithstanding any provision of law to the contrary,
9 declaratory relief may be obtained for the action.

10 (d) Any party aggrieved by the decision of the circuit
11 court may appeal in accordance with part I of chapter 641 and
12 the appeal shall be given priority.

13 **§201H-R Issuance of bonds.** The director of finance, from
14 time to time, may issue general obligation bonds pursuant to
15 chapter 39 in amounts as may be authorized by the legislature,
16 for the purposes of this subpart.

17 **§201H-S Violations and penalty.** (a) The corporation may
18 set, charge, and collect reasonable fines for violation of this
19 subpart or any rule adopted pursuant to chapter 91.

20 Notwithstanding section 201H-E(c), any person violating any rule
21 adopted pursuant to chapter 91, for which violation a penalty is



1 not otherwise provided, shall be fined not more than \$500 a day
2 and shall be liable for administrative costs incurred by the
3 corporation.

4 (b) The corporation may maintain an action for an
5 injunction to restrain any violation of this subpart and may
6 take any other lawful action to prevent or remedy any violation.

7 (c) Notwithstanding section 201H-E(c), any person
8 violating this subpart shall, upon conviction, be punished by a
9 fine not exceeding \$1,000 or by imprisonment not exceeding
10 thirty days, or both. The continuance of a violation after
11 conviction shall be deemed a new offense for each day of the
12 continuance.

13 **§201H-T Additional powers.** The powers conferred upon the
14 corporation by this subpart shall be in addition and
15 supplemental to the powers conferred by any other law, and
16 nothing in this subpart shall be construed as limiting any
17 powers, rights, privileges, or immunities so conferred.

18 **§201H-U State lands no longer needed.** State lands that
19 are no longer needed for affordable residential leasehold units
20 by the Hawaii housing finance and development corporation shall
21 be returned to the previous owner of those lands.



1 **§201H-V Rules.** The corporation may adopt rules, pursuant
2 to chapter 91, necessary for the purposes of this subpart.

3 C. Leasehold Condominiums on State Lands

4 **§201H-W Leasehold condominiums on state lands.** (a) The
5 corporation may sell leasehold units in condominiums organized
6 pursuant to chapter 514B and developed under this subpart on
7 state land to a "qualified resident" as defined in section
8 201H-32.

9 (b) The term of the lease may be for ninety-nine years,
10 and the corporation may extend or modify the fixed rental period
11 of the lease or extend the term of the lease.

12 (c) The sale of leasehold units shall be subject to
13 sections 201H-47, 201H-49, and 201H-50, except for units sold at
14 fair market value.

15 (d) State land set aside by the governor to the
16 corporation and lands leased to the corporation by any
17 department or agency of the State for a condominium described in
18 this section shall be exempt from the definition of "public
19 land" under section 171-2, except for the provision in section
20 171-2(6) that subjects corporation lands to the accounting for



1 all receipts for lands subject to section 5(f) of the Admission
2 Act.

3 (e) The powers conferred upon the corporation by this
4 section shall be in addition and supplemental to the powers
5 conferred by any other law, and nothing in this section shall be
6 construed as limiting any powers, rights, privileges, or
7 immunities so conferred."

8 SECTION 3. Chapter 237, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§237- Exemption of sale of leasehold interest for
12 ALOHA home units. In addition to the amounts exempt under
13 section 237-24, this chapter shall not apply to amounts received
14 from the sale of a leasehold interest in an ALOHA homes unit
15 under chapter 201H, subpart B."

16 SECTION 4. Section 171-2, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§171-2 Definition of public lands. "Public lands" means
19 all lands or interest therein in the State classed as government
20 or crown lands previous to August 15, 1895, or acquired or
21 reserved by the government upon or subsequent to that date by



1 purchase, exchange, escheat, or the exercise of the right of
 2 eminent domain, or in any other manner; including lands accreted
 3 after May 20, 2003, and not otherwise awarded, submerged lands,
 4 and lands beneath tidal waters that are suitable for
 5 reclamation, together with reclaimed lands that have been given
 6 the status of public lands under this chapter, except:

- 7 (1) Lands designated in section 203 of the Hawaiian Homes
 8 Commission Act, 1920, as amended;
- 9 (2) Lands set aside pursuant to law for the use of the
 10 United States;
- 11 (3) Lands being used for roads and streets;
- 12 (4) Lands to which the United States relinquished the
 13 absolute fee and ownership under section 91 of the
 14 Hawaiian Organic Act prior to the admission of Hawaii
 15 as a state of the United States unless subsequently
 16 placed under the control of the board of land and
 17 natural resources and given the status of public lands
 18 in accordance with the state constitution, the
 19 Hawaiian Homes Commission Act, 1920, as amended, or
 20 other laws;
- 21 (5) Lands to which the University of Hawaii holds title;



1 (6) Lands that are set aside by the governor to the Hawaii
2 housing finance and development corporation; lands
3 leased to the Hawaii housing finance and development
4 corporation by any department or agency of the State;
5 or lands to which the Hawaii housing finance and
6 development corporation in its corporate capacity
7 holds title; provided that lands described in this
8 paragraph shall be considered "public lands" for the
9 purpose of accounting for all receipts from lands
10 described in section 5(f) of the Admission Act for the
11 prior fiscal year, pursuant to section 5 of Act 178,
12 Session Laws of Hawaii 2006; provided further that
13 payment of receipts pursuant to this paragraph may be
14 made in a form of remuneration or consideration other
15 than cash;

16 (7) Lands to which the Hawaii community development
17 authority in its corporate capacity holds title;

18 (8) Lands to which the department of agriculture holds
19 title by way of foreclosure, voluntary surrender, or
20 otherwise, to recover moneys loaned or to recover
21 debts otherwise owed the department under chapter 167;



1 (9) Lands that are set aside by the governor to the Aloha
 2 Tower development corporation; lands leased to the
 3 Aloha Tower development corporation by any department
 4 or agency of the State; or lands to which the Aloha
 5 Tower development corporation holds title in its
 6 corporate capacity;

7 (10) Lands that are set aside by the governor to the
 8 agribusiness development corporation; lands leased to
 9 the agribusiness development corporation by any
 10 department or agency of the State; or lands to which
 11 the agribusiness development corporation in its
 12 corporate capacity holds title;

13 (11) Lands to which the Hawaii technology development
 14 corporation in its corporate capacity holds title; and

15 (12) Lands to which the department of education holds
 16 title;

17 provided that, except as otherwise limited under federal law and
 18 except for state land used as an airport as defined in section
 19 262-1, public lands shall include the air rights over any
 20 portion of state land upon which a county mass transit project
 21 is developed after July 11, 2005."



1 SECTION 5. Chapter 201H, Hawaii Revised Statutes, is
 2 amended by designating sections 201H-31 to 201H-70 as subpart A
 3 and inserting a title before section 201H-31 to read as follows:

4 "A. General Provisions"

5 SECTION 6. Section 302A-1603, Hawaii Revised Statutes, is
 6 amended by amending subsection (b) to read as follows:

7 "(b) The following shall be exempt from this section:

- 8 (1) Any form of housing permanently excluding school-aged
 9 children, with the necessary covenants or declarations
 10 of restrictions recorded on the property;
- 11 (2) Any form of housing that is or will be paying the
 12 transient accommodations tax under chapter 237D;
- 13 (3) All nonresidential development; [and]
- 14 (4) Any development with an executed education
 15 contribution agreement or other like document with the
 16 department for the contribution of school sites or
 17 payment of fees for school land or school
 18 construction[-]; and
- 19 (5) Any form of development by the Hawaii housing finance
 20 and development corporation pursuant to chapter 201H,
 21 part II, subpart B."



1 SECTION 7. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$ or so much
 3 thereof as may be necessary for fiscal year 2019-2020 to be
 4 deposited into the ALOHA homes revolving fund established
 5 pursuant to section 201H-N, Hawaii Revised Statutes.

6 SECTION 8. There is appropriated out of the ALOHA homes
 7 revolving fund established pursuant to section 201H-N, Hawaii
 8 Revised Statutes, the sum of \$ or so much thereof as may
 9 be necessary for fiscal year 2019-2020 for the purposes for
 10 which the revolving fund is established.

11 The sum appropriated shall be expended by the Hawaii
 12 housing finance and development corporation for the purposes of
 13 this Act.

14 SECTION 9. In codifying the new sections added by section
 15 2 of this Act, the revisor of statutes shall substitute
 16 appropriate section numbers for the letters used in designating
 17 the new sections in this Act.

18 SECTION 10. Statutory material to be repealed is bracketed
 19 and stricken. New statutory material is underscored.

20 SECTION 11. This Act shall take effect on July 1, 2050.



S.B. NO. ¹ S.D. 2

Report Title:

ALOHA Homes Program; Housing; HHFDC; Urban Redevelopment District; Transit-oriented Development; Leasehold Condominiums on Lands Controlled by the State; Appropriation

Description:

Establishes the ALOHA homes program under the Hawaii Housing Finance and Development Corporation (HHFDC) to facilitate the development of low-cost homes for sale to Hawaii residents on state-owned and county-owned land near rail stations of the Honolulu rail transit system, to be known as the urban redevelopment district. Establishes guidelines within the urban redevelopment district and provisions related to the sale of leasehold interest of ALOHA homes. Exempts lands to which HHFDC holds title and land set aside or leased to HHFDC from the definition of public lands in section 171-2, HRS, except for purposes of accounting for receipts from ceded lands. Establishes and appropriates funds into and out of the ALOHA homes revolving fund. Authorizes HHFDC to sell the leasehold interest in residential condominium units located on state lands for lease terms of 99 years. Effective 7/1/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



ASSEMBLY BILL

No. 387

**Introduced by Assembly Member Lee
(Coauthor: Assembly Member Wicks)**

February 2, 2021

An act relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 387, as introduced, Lee. Social Housing Act of 2021.

Existing law establishes the Department of Housing and Community Development and sets forth its powers and duties. Existing law establishes various programs providing assistance for, among other things, emergency housing, multifamily housing, farmworker housing, homeownership for very low and low-income households, and downpayment assistance for first-time homebuyers.

This bill would declare the intent of the Legislature to subsequently amend this bill to include provisions that would enact the Social Housing Act of 2021 to establish the California Housing Authority for the purpose of developing mixed-income rental and limited equity homeownership housing and mixed-use developments to address the shortage of affordable homes for low and moderate-income households.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

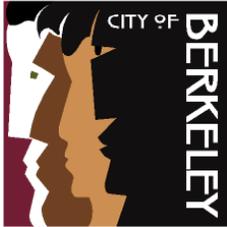
- 1 SECTION 1. It is the intent of the Legislature to subsequently
- 2 amend this measure to include provisions that would enact the
- 3 Social Housing Act of 2021 to establish the California Housing

AB 387

— 2 —

- 1 Authority for the purpose of developing mixed-income rental and
- 2 limited equity homeownership housing and mixed-use
- 3 developments to address the shortage of affordable homes for low
- 4 and moderate-income households.

O



Kate Harrison
Councilmember District 4

ACTION CALENDAR
July 28, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Kate Harrison
Subject: Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

RECOMMENDATION

Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

BACKGROUND

Berkeley has had regulations on short term rentals (STRs) since 2017, allowing STRs in most residential and commercial zones, as long as the host pays the transient occupancy tax and the unit being rented fits particular criteria (no Below Market Rate unit may be a short term rental, no unit may be a short term rental if it has had a No Fault Eviction in the past five years, etc). The City of Santa Monica also has an ordinance regulating STRs that places the regulatory burden on the *host platform* (i.e., AirBnB or other corporate host platforms) rather than the individual renting out their unit. Santa Monica placed four obligations on the host platform: collecting and remitting transient occupancy taxes, regularly disclosing listings and booking information to the City, refraining from booking properties not licensed by the City, and refraining from collecting fees for ancillary services.¹ The Ninth Circuit Court of Appeals upheld the legality in the case of *Homeaway.com v. Santa Monica*, thus confirming the rights of Cities to regulate short term rental host platforms.

The proposed amendments update the City of Berkeley's STR regulations to more closely align with Santa Monica's ordinance, as well as other amendments intended to ensure that the short term rentals in Berkeley serve the needs of the City. The primary five changes are as follows:

1) Regulatory burden shifted to the Host Platform

We clarify the definition of a hosting platform in 23C.22.030.H (page 2) as a marketplace that derives revenue from maintaining said short term rental marketplace. Regulating the host platform consolidates regulation and ensures that the transient

¹ *Homeaway.com v Santa Monica*. United State Court of Appeals for the Ninth Circuit. No. 18-55367.

occupancy tax owned to the City gets paid. Recommended changes to 23C.22.050.H and I (page 5) state that if a hosting platform is utilized to book a short term rental, both it and the individual host are legally responsible and are jointly liable for remitting the transient occupancy tax. New section 23C.22.050.I (pages 5-6) also outlines new duties of the hosting platform, including a regular disclosure of short term rental listings in the City as well as their address, length of stay, and listed prices. In addition, the hosting platform is responsible for ensuring that all short term rentals are appropriately licensed with a Zoning Certificate and adds the requirements that STRs must list the Zoning Certificate on any STR advertisements. The new regulations also include a safe harbor clause, making clear that hosting platforms that disclose listings, regularly remit the transient occupancy tax, and ensure the listing has a Zoning Certificate will be presumed to be in compliance with the chapter.

2) Hosts can have only one residence

Individual people have the right to rent out their homes on a short term basis, but in a housing crisis, it is in the best interest of the City to ensure that no one has extra units for STRs when they could house someone long term instead. To that end, 23C.22.030.F and 23C.22.030.I (pages 2-3) clarify that hosts may not have more than one principle place of residency, which may include accessory buildings or ADUs.

3) Short term rentals limited to single ADUs, single Accessory Buildings or Golden Duplexes not rented for the past ten years

The current ordinance limits use of Accessory Buildings or Accessory Dwelling Units to those that have not been rented for ten years. Additions to Section 23C.22.020.D (page 1) expand that prohibition to include more than one Accessory Building or ADU on a property and prohibits short term rentals in Golden Duplexes if those units have been rented in the last ten years. Unpermitted use of these units would be investigated by the Rent Stabilization Board under Section 23C.22.060.I (page 7).

4) Closing 14/30 day loophole

Under current law, any rental over 14 days is not a short term rental and thus does not require paying a transient occupancy tax. Any rental that is shorter than 30 days is not a long term rental and thus rent control and other rental protections are awarded to the tenant. As it now stands there are instances of regularly renting a unit for a period of time between 14 days and fewer than 30 days, thus circumventing standard regulations. 23C.22.030.N (page 3) and 23C.22.040 (page 4) close this loophole by disallowing rentals between 14 and 30 days, and stating that no Zoning Certificate or advertisement for a short term rental may be permitted for rentals longer than 14 days.

5) Remedies

New language under 23C.22.060E and 23C.22.060.J (page 7) clarify that in the case of a private right of action the prevailing party is entitled to recover reasonable costs and attorney's fees, thus making private right of action more financially feasible. The new

Resolution in Support of Senate Bill 54 and Assembly Bill 1080:
The California Circular Economy and Plastic Pollution Reduction Act

ACTION CALENDAR
July 28, 2020

language also gives the City the right to issue administrative subpoenas to determine whether short term rentals are in compliance with the chapter. Both of these edits are intended to encourage enforcement and compliance.

Finally, the ordinance clarifies the definitions of the terms Accessory Building, Accessory Dwelling Unit, and the Transient Occupancy Tax and defines a Golden Duplex and other clarifying language.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS

Ordinance

100Chapter 23C.22 Short-Term Rentals

23C.22.010 Purposes

The purposes of the Short-Term Rentals related regulations contained in this Chapter are:

- A. To prevent long-term rental units from being replaced with Short-Term Rentals and protect affordable housing units from conversion.
- B. To preserve and protect neighborhood character and livability from nuisances that are often associated with Short-Term Rentals.
- C. To generate City revenue to share City infrastructure cost and other public expenditures by operation of Short-Term Rentals under established standards.
- D. To provide alternative forms of lodging. (Ord. 7521-NS § 1 (part), 2017)

23C.22.020 Applicability

- A. Short-Term Rentals shall be allowed in residential uses in the following zoning districts: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.
- B. Short-Term Rentals shall be prohibited in below market rate (BMR) units. BMR units for Short-Term Rental purposes refer to Dwelling Units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income-qualified.
- C. A property containing a Dwelling Unit protected by a No-Fault Eviction cannot operate Short-Term Rentals for five years from eviction unless it is a single-family home that has been vacated for purposes of Owner Occupancy in compliance with the Rent Stabilization Ordinance.
- D. Short-Term Rentals are only allowed in a single, Accessory Building and in single existing Accessory Dwelling Units (ADUs), or a Golden Duplex unless such ADUs are or have within the last 10 (ten) years preceding the effective date of this ordinance been used for long term rentals, as defined by the requirements of the Rent Stabilization Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date this Ordinance first became effective. (Ord. 7521-NS § 1 (part), 2017)

23C.22.030 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

A. Accessory Building: A detached building containing habitable space, excluding a kitchen, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

B. Accessory Dwelling Unit: A secondary dwelling unit that is located on a lot which is occupied by one legally established Single-Family Dwelling that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the Single-Family Dwelling: 1) exterior access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes an efficiency unit and a manufactured home, as defined in the Health and Safety Code.

C. "Adjacent Properties" mean the Dwelling Units abutting and confronting, as well as above and below, a Dwelling Unit within which a Short-Term Rental is located.

D. "Dwelling Unit" means a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.

E. "Golden Duplex" means an owner-occupied duplex that is exempt from rent control and eviction protection, so long as it was occupied by the owner on December 31, 1979 and is currently occupied by the owner.

F. "Host" means any Owner and is used interchangeably in this Title with Owner Host. An Owner Host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers his or her Host Residence, or a portion thereof, as a Short-Term Rental. For purposes of offering a Short-Term Rental, an Owner Host may not have more than one "Host Residence" in the City of Berkeley, excluding an Accessory Building or an Accessory Dwelling Unit on the same residential real property. A Tenant Host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their Host Residence, or portion thereof, as a Short-Term Rental.

G. "Host Present" or "Host Presence" means the Host is living in the Host Residence during the Short-Term Rental period. In the case of a parcel comprised of a Single Family Dwelling and one or more authorized Accessory Dwelling Units and/or Accessory Buildings, the Host is considered Present if he or she is present in any Dwelling Unit on such property during the Short Term Rental period.

H. "Hosting Platform" means a business or person that provides a marketplace through which an Owner Host may offer a Dwelling Unit for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a Dwelling Unit to be advertised through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange and pay for Short-Term Rentals, and from which operator of the Hosting Platform derives revenue, including booking fees or advertising revenues, from providing or maintaining the marketplace.

L. "Host Residence" means a Host's principal place of residence as defined by whether the Host carries on basic living activities at the place of residence, and whether the place of residence is the Host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency. A Host may have only one place of principal residency in the City and if that principal place of residency contains more than one dwelling unit, the principal place of residency shall be only one such dwelling unit.

J. "Host Responsibilities" means the requirements that a "Host" is obligated to comply with as set forth in this Ordinance.

K. "Local Contact" means a person designated by the Host who shall be available during the term of any Short-Term Rental for the purpose of (i) responding within sixty minutes to complaints regarding the condition or operation of the Dwelling Unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and (ii) taking appropriate remedial action on behalf of the Host, up to and including termination of the Short Term Rental, if allowed by and pursuant to the Short Term Rental agreement, to resolve such complaints.

L. "No Fault Eviction" means an eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Berkeley Municipal Code.

M. "Short-Term Rental" or "STR" means the use of any Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portions thereof for dwelling, sleeping or lodging purposes by Short-Term Rental Transients. Short-Term Rental shall be an accessory use to a residential use and be considered neither a Tourist Hotel nor a Residential Hotel for purposes of this Title.

N. Short Term Rentals are allowed for 14 or fewer consecutive days. Any rental for more than 14 consecutive days is not permitted as a Short Term Rental, and any rental for more than 14 consecutive days and less than 30 consecutive days is not permitted in the City of Berkeley.

O. "Short-Term Rental Transient" or "STR Transient" means any person who rents a Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portion thereof, [for 14 or fewer consecutive days](#).

P. ["Transient Occupancy Tax" or "TOT" means local transient tax as set forth in Berkeley Municipal Code Section 7.36. The tax is paid by the Short-Term Rental Transient at the time payment is made for the Short-Term Rental. The TOT is then remitted to the City.](#)

23C.22.040 Permit And License Required

Short Term Rentals are permitted only in the Host Residence. A Zoning Certificate [and a Business License](#) for a Short-Term Rental shall be required for each Host to operate a Short-Term Rental. [A Host must provide the Uniform Resource Locator \(URL\) — specifically, the website address — for any and all advertisements for the STR, if applicable, on the Zoning Certificate application.](#)

[No Zoning Certificate may be issued to allow for a Short-Term Rental of more than 14 consecutive days, and no advertisement for a Short Term Rental of more than 14 consecutive days is allowed.](#)

23C.22.050 Operating Standards and Requirements

A Short-Term Rental is allowed only if it conforms to each of the operating standards and requirements set forth in this Section, [and the Host complies with all Host Responsibilities set forth in this Ordinance.](#)

A. Proof of Host Residency.

1. An Owner-Host of a Short-Term Rental must provide documentation of Owner Host and Host Residence status and, if applicable, Host Presence, as defined [above](#).

2. A Tenant-Host must provide documentation of lessee status, Host Residence and Host Presence, if applicable, as defined in subdivisions C, E, and B of Section [23C.22.030](#). In addition, a Tenant-Host must present written authorization allowing for a Short-Term Rental in the Host Residence from the building owner or authorized agent of the owner.

B. STR Duration and Required Residency Timeframes

1. When the Host is Present, the unit, or a portion thereof, may be rented as a Short-Term Rental for an unlimited number of days during the calendar year.

2. When the Host is not Present, the number of days that the unit can be used for Short-Term Rental purposes shall be limited to 90 days per calendar year.

C. Number of Occupants. The maximum number of Short-Term Rental Transients allowed for a Short-Term Rental unit shall be as provided for in the Berkeley Housing Code (BMC Chapter [19.40](#)).

D. Notification.

(i) Initial, one-time notification of the establishment of a Short-Term Rental by [Zoning Certificate](#) and Business license, shall be provided to the residents of all Adjacent Properties. Notification shall include Host and Local Contact information. Additional notification shall be required within a week of updated Host [or Local Contact information](#).

(ii) In any advertisement for the STR, a Host must include the [Zoning Certificate number](#).

E. Enforcement Fee. For the initial enforcement period, while enforcement costs are being determined, the Host shall pay an additional enforcement fee in an amount equal to 2% of the rents charged by that Host, not to exceed the cost of the regulatory program established by this Chapter over time. Such fees may be paid by the Hosting Platform on behalf of the Host. After the initial enforcement period, the Council may revise the enforcement fee by resolution.

F. Liability Insurance. Liability insurance is required of the Host, or Hosting Platform on behalf of the Host, in the amount of at least \$1,000,000.

G. Documents Provided to STR Transients. Electronic or paper copies of the Community Noise Ordinance and Smoke-Free Multi-Unit Housing Ordinance must be provided to STR Transients upon booking and upon arrival.

H. Transient Occupancy Tax. (“TOT”). The TOT shall be collected on all Short-Term Rentals. The Host is responsible for collecting and remitting the TOT, in coordination with any Hosting Platform, if utilized, to the City. If a Hosting Platform collects payment for rentals, then both it and the Host shall have legal responsibility for collection and remittance of the TOT.

I. Housing Platform Responsibilities.

(i) Subject to applicable laws, A Hosting Platform shall disclose to the City on a regular basis each rental listing located in the City, the names of the person or persons responsible for each such listing, the address of each such listing, the length of stay for each such listing, and the price paid for each booking transaction.

(ii) A Hosting Platform shall not complete any booking transaction for any STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform receives a fee the booking transaction.

(iii) A Hosting Platform shall not collect or receive a fee for a STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform would otherwise be entitled to receive a fee for the booking transaction.

(iv) Safe Harbor: A Hosting Platform operating exclusively on the internet, which operates in compliance with subsections (i), (ii) and (iii) above, shall be presumed to be in compliance with this Chapter.

J. Housing Code Compliance. Any building or portion thereof used for Short-Term Rentals shall comply with the requirements of the Berkeley Housing Code (BMC Chapter [19.40](#)).

K. Payment of Additional Taxes: The Host shall pay all City taxes and fees owed, in addition to the TOT, if applicable, in a timely manner. [100](#)

L. The Host shall be responsible for listing on any rental ad the Zoning Certificate number. The Host shall also provide both the Business License number, if required pursuant to Chapter [9.04](#), and Zoning Certificate for the STR to the City and/or a vendor hired by the City to administer this Chapter, upon request.

23C.22.060 Remedies

A. Compliance with Second-Response Ordinance. The Host shall comply with the Second Response Ordinance (BMC Chapter [13.48](#)). The Host shall be prohibited from operating Short-Term Rentals for one year upon issuance of a third violation affidavit.

B. Violation of any provision of this Chapter is punishable as set forth in Chapters [1.20](#) and [1.28](#).

C. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters [1.24](#), [1.26](#) and [23B.64](#).

D. In any enforcement action by the City, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section [38773.5](#), attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of

attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

E. Any resident of the City may bring a private action for injunctive or other relief to prevent or remedy a public nuisance as defined in this Chapter, or to prevent or remedy any other violation of this Chapter. No action may be brought under this subdivision unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute. The prevailing party in any such action shall be entitled to recover reasonable costs and attorney's fees.

F. Any occurrence at a Short-Term Rental unit that constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.

G. It shall be a public nuisance for any STR Transient of a Short-Term Rental unit where an event is taking place to refuse access to, or interfere with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.

H. Notwithstanding any provision of Chapter [13.48](#) to the contrary, a public nuisance as defined in this Section shall be subject to remedies set forth in Section [23C.22.060](#). (Ord. 7521-NS § 1 (part), 2017)

I. A violation of this Chapter by a Host Owner who offers or rents a rent controlled unit, multiple ADU's, multiple Accessory Buildings, or a Golden Duplex, may be reported to the Berkeley Rent Stabilization Board for investigation by the Board. Upon report of a violation to the Rent Stabilization Board, the Board is required to provide a written report of the investigation within 30 days. Where a violation is found, the Rent Board will immediately provide the written report supporting its finding of a violation to the City Attorney's office for remedial action by the City.

J. The City may issue and serve administrative subpoenas as necessary to obtain specific information regarding Short-Term Rentals located in the City, including but not limited to, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the STR and related listing complies with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than 30 days

from the date of service. A person or entity that has been served with an administrative subpoena may seek judicial review during that 30 day period.